

OFFICE OF THE UNITED STATES

TRADE REPRESENTATIVE

+ + + + +

TRADE POLICY STAFF COMMITTEE

+ + + + +

FTAA MARKET ACCESS

PUBLIC HEARING

+ + + + +

MONDAY,

SEPTEMBER 9, 2002

+ + + + +

The public hearing was held in Conference Rooms 1 and 2, USTR Annex, 1724 F Street, N.W., Washington, D.C., at 10:00 a.m., Carmen Suro-Bredie, Chairperson, presiding.

PRESENT:

CARMEN SURO-BREDIE, Chairperson, USTR

REGINA VARGO, USTR

BARBARA CHATTIN, USTR

KIMBERLY CLAMAN, USTR

WILLIAM CLATANOFF, USTR

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

PRESENT (Continued):

JONATHAN FRITZ, USTR

BENNETT HARMAN, USTR

RUSSELL SMITH, USTR

GLORIA BLUE, Executive Secretary

ALSO PRESENT:

OMAR KARAWA, Department of Agriculture

ANDREA MALITO, Department of Commerce

MICHELLE CARRILLO, Department of Commerce

JANIE HESTER, Department of Labor

BETSY WHITE, Department of Labor

BARBARA BOWIE-WHITMAN, Department of State

KAREN BROWN, Department of State

BARBARA McLEOD, Environmental Protection
Agency

DAN LEAHY, U.S. International Trade
Commission

C-O-N-T-E-N-T-S

	<u>PAGE</u>
Introduction, Carmen Suro-Bredie	5
Update by Regina Vargo	10
<u>Presentation by:</u>	
Mitchell Cooper	17
Thea Lee	27
Steve Lamar	43
Charlene Stocker	58
Ambassador Myles Frechette	70
Peter Mangione	84
Brook Baker	97
John Meakem	106
Dr. Ellen Shaffer	113
Steve Beckman	125
Jim Thomas	143
Peter Hiebert	152
Andrew Szamosszegi	155, 172
Ramon Cantero-Frau	168
Jake Caldwell	181
Maureen Heffern Ponicki	197
Jaime Castenada	210

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
 1323 RHODE ISLAND AVE., N.W.
 WASHINGTON, D.C. 20005-3701

C O N T E N T S (Continued)PAGEPresentation by:

Richard Hudgins	218
Dennis McDonald	231
Susan Brauner	240
Wythe Willey	249
Gary Broyles	261
Rachel Cohen	272

P-R-O-C-E-E-D-I-N-G-S

(10:03 a.m.)

CHAIRPERSON SURO-BREDIE: The hearing will
come to order.

This hearing is being conducted by the
Trade Policy Staff Committee, known as the TPSC, an
interagency body chaired by the Office of the U.S.
Trade Representative.

In addition to USTR, there are
representatives from the Department of Agriculture,
Commerce, Labor, Interior, State, Treasury, the
Environmental Protection Agency, and the U.S.
International Trade Commission.

Many members of the FTAA negotiating teams
will be present.

The subject of this hearing is the
proposed negotiation of a free trade area of the
Americas. The TPSC is seeking public comment on the
effects of the elimination of tariffs and non-tariff
barriers to trade and other market liberalization
among the free trade area of the Americas'
participating countries and any other matter relevant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to the FTAA agreement.

2 On December 11th, 1994, the 34
3 democratically elected leaders in the Western
4 Hemisphere met in Miami, Florida for the first Summit
5 of the America. They agreed to conclude negotiations
6 on the free trade area of the Americas by the year
7 2005 and to achieve concrete progress toward that
8 objective by the end of the 20th Century.

9 Since that time, the 34 Western Hemisphere
10 ministers responsible for trade have met on several
11 occasions. The work of nine negotiating groups began
12 in September 1998. In anticipation of that activity,
13 the TPSC published a notice in the Federal Register
14 requesting public comments, and then there's the
15 citation in the written record, 63 FR 128, July 6th,
16 1998, on what should be the U.S. positions and
17 objectives with respect to each of the negotiating
18 groups.

19 This notice also stated that USTR would
20 seek additional public comment separately on other
21 issues related to the FTAA, including the economic
22 effects of the elimination of tariffs and non-tariff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 barriers to trade among FTAA participating countries.

2 In April 2001, the 34 trade ministers met
3 in Buenos Aires, Argentina, and mandated that the
4 market access negotiations be initiated no later than
5 May 15th, 2002. The ministers also decided to make
6 public the FTAA preliminary draft consolidated text,
7 which has been posted on the FTAA Web site at
8 www.ftaa-alca.org.

9 The TPSC subsequently issued a notice
10 inviting public comments on the draft text, and then
11 there's the citation, 66 FR 36,614, July 12th, 2001.

12 On April 22nd, 2001, the 34 leaders of the
13 Summit of the Americas met in Quebec City and
14 confirmed that the negotiation of the FTAA agreement
15 would conclude no later than January of 2005. As
16 provided in the regulations of the Trade Policy Staff
17 Committee, 16 CFR, Part 203, the Chairman of the TPSC
18 has invited written comments and/or oral testimony of
19 interested parties at a public hearing. Comments and
20 testimony may address the reduction or elimination of
21 tariffs or non-tariff barriers on any articles
22 provided for in the harmonized tariff schedule of the

1 United States that are products of an FTA country, any
2 concession which should be sought by the United
3 States, or any other matter relevant to the FTAA.

4 The TPSC invites comments and testimony on
5 all of these matters, and in light of the schedule for
6 presenting market access offers, in particular, seeks
7 comments and testimony addressed to economic benefits
8 and costs to U.S. producers and consumers of the
9 elimination of tariffs on trade between the United
10 States and the 33 other FTAA countries, and in the
11 case of articles for which immediate elimination of
12 tariffs is not recommended, the recommended staging
13 schedule for such elimination.

14 Also, existing non-tariff barriers to
15 trading goods between the United States and the 33
16 other FTAA countries and the economic benefits and
17 costs of removing these barriers.

18 Third, existing barriers to trade in
19 services and government procurement between the United
20 States and the 33 other FTAA countries, and the
21 economic benefits and costs of removing such barriers.

22 Also, economic benefits and costs to U.S.

1 producers and consumers of strengthening the
2 protection and enforcement of intellectual property
3 rights in FTAA countries and improving market access
4 for products subject to RPR protection.

5 Finally, existing restrictions on
6 investment flows between the United States and the 33
7 other FTAA countries and the economic benefits and
8 costs of eliminating any such restrictions.

9 Persons who submitted comments pursuant to
10 a previous request for public comments concerning the
11 FTAA should not resubmit those comments. A hearing is
12 being held on September 9th, today and tomorrow in
13 Rooms 1 and 2 at 1724 F Street. Interested persons,
14 including persons who participate in the hearing may
15 submit written comments by noon September 23rd, 2002.
16 This is a firm deadline.

17 Written comments may include rebuttal
18 points demonstrating errors of fact or analysis not
19 pointed out in the hearing. The first page of written
20 comments must specify the subject matter, including as
21 applicable the product or products with HTSUS numbers
22 or service sectors.

1 I would now like to introduce the panel
2 members, including Regina Vargo, Assistant U.S. Trade
3 Representative for the Americas. After these
4 introductions, we will hear from the first witness, a
5 statement by Mr. Mitchell Cooper, counsel for the
6 Rubber and Plastic Footwear Manufacturers Association.

7 Regina, please.

8 MS. VARGO: Thank you, Carmen, and thank
9 you all very much for showing up here today.

10 Carmen, before we do the introduction of
11 the panel members, Carmen asked if I would come by and
12 give you a brief update.

13 Can you all hear me over the air
14 conditioning?

15 Give you a brief update on where we are in
16 the FTAA negotiations, which I think are moving
17 forward strongly and are on track.

18 We had two principal mandates for this
19 period leading up to the next ministerial, which will
20 be held in Quito, Ecuador on November the 1st. One
21 mandate was to keep working on the text.

22 The second mandate was to launch the

1 market access negotiations by May 15th.

2 As I mentioned, I think we're very much on
3 track for both of these elements. On the text, the
4 negotiating groups have produced a second version of
5 their text in their respective areas, and the Vice
6 Ministers have made a recommendation to ministers that
7 they be released to the public as they were at the
8 last ministerial.

9 Now the text is, of course, if you will,
10 the obligations of the agreement.

11 The second mandate we had related to the
12 launching of the market access component of the talks,
13 which means, in essence, what's going to be covered
14 and schedules where necessary to dictate, say, the
15 elimination of tariffs, et cetera.

16 This market access part of the talk
17 relates to five different areas: agricultural goods,
18 industrial goods, services, investment, and government
19 procurement.

20 And so far we've made initial decisions
21 about how we're going to conduct those negotiations or
22 what we call the methods and modalities so that these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 talks can move forward.

2 A couple of points that I thought I'd
3 highlight. First of all, we have agreed that there
4 will be no a priori exclusions.

5 We've also agreed for the schedule for the
6 initiation and exchange of offers. We've agreed that
7 in all five areas this relates to that initial offers
8 will be made in the period between December 15th of
9 this year and February 15th of 2003; that requests for
10 improvements to those offers will be made between
11 February 16th and June 15th; and then beginning on
12 July 15th we'll begin an iterative process of
13 continuing to revise and improve offers.

14 For the tariff talks, we've agreed that
15 base rates will be notified between August the 15th
16 and October the 15th, and in fact, the U.S. was the
17 first country to notify its base tariffs. We did that
18 on August the 16th.

19 This September each of these five groups
20 is meeting. They are going to be meeting to discuss
21 in their groups kind of the format that they'll be
22 using for the exchange of offers, and I would note in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that regard I think we've managed to have our key
2 negotiators here to listen to your comments, but I
3 think it's government procurement and services that
4 are meeting this week.

5 So we won't have all of our negotiators
6 here, and I wanted you to understand the reason why.
7 They're busy meeting on the FTAA.

8 Also in September we're going to have a
9 new group begin meeting, an ad hoc group that will
10 begin the very detailed work necessary on rules of
11 origin, and that group will be in proximity with the
12 market access group, which is its parent.

13 Another, I think, significant element of
14 the Quito Ministerial this time will be taking a
15 closer look at technical assistance for the smaller
16 economies, and those economies at lower levels of
17 development.

18 And, in particular, we're working on a
19 hemispheric cooperation program, and Ambassador
20 Zoellick will be traveling to the CARICOM countries.
21 He leaves tomorrow and will be meeting with the trade
22 ministers of CARICOM on Wednesday to talk further

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 about this idea.

2 Procedurally there will be two big
3 developments I'd like to note. One is you're all used
4 to hearing about the negotiations taking place in
5 Panama. Well, come next spring, the Secretariat will
6 move to Puebla, Mexico. So that will be the next site
7 for all of the individual negotiating groups and
8 committees to meet at.

9 Vice ministerials and ministerial meetings
10 rotate, but the other groups meet routinely at the
11 same place.

12 Also, Brazil and the U.S. will begin a co-
13 chairmanship of the FTA process for the final 26 month
14 phase that will begin after Quito, and we've been
15 working very closely with Brazil to figure out how
16 we're going to do this, but I would just note for you
17 that we haven't -- we've decided not to just take 26
18 months and divide them into just two 13 month
19 segments. We're going to try to do this as a true co-
20 chairmanship, and so we're working at the issues like
21 how we plan to handle communications and things of
22 that nature.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Finally, I'd like to note that we expect
2 the Quito Ministerial to have an Americas Business
3 Forum and a Civil Society Forum, and I would urge any
4 of those of you here who are interested to try to
5 participate in those events.

6 So with that as a brief overview, I'd like
7 to be able to leave the maximum amount of time to have
8 us hear from you. So let me suggest that the panel
9 members introduce themselves, and why don't we begin
10 down at this end?

11 MR. KARAWA: My name is Omar Karawa from
12 the Department of Agriculture.

13 MR. HARMAN: Bennett Harman, Office of the
14 U.S. Trade Representative.

15 MR. LEAHY: Dan Leahy, U.S. International
16 Trade Commission.

17 MS. VARGO: Regina Vargo, USTR.

18 CHAIRPERSON SURO-BREDIE: Carmen Suro-
19 Bredie, USTR, and the Chair.

20 MS. BOWIE-WHITMAN: Barbara Bowie-Whitman,
21 State.

22 MS. CARRILLO: Michelle Carrillo,

1 Department of Commerce.

2 MS. WHITE: Betsy White, Department of
3 Labor.

4 MR. CLATANOFF: Bud Clatanoff, USTR.

5 CHAIRPERSON SURO-BREDIE: So if the first
6 witness could approach the chair, please.

7 MS. VARGO: Excuse me, Mitch. I'm going
8 to have to depart.

9 MR. COOPER: You're going to leave?

10 MS. VARGO: But I will read it all.

11 MR. COOPER: I'll try to finish by the
12 time you get to the door.

13 MS. VARGO: You won't be doing the folks
14 a service if you do that.

15 Thank you all very much.

16 CHAIRPERSON SURO-BREDIE: Could I ask the
17 panel members to reintroduce themselves? Because
18 otherwise the transcription will be incorrect.

19 THE REPORTER: All I need to know is the
20 new gentleman and I'll be fine.

21 CHAIRPERSON SURO-BREDIE: Okay. Can you
22 introduce yourself?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SMITH: Russell Smith. I'm with the
2 FTAA Office at USTR.

3 MS. MALITO: And Andrea Malito. I'm with
4 the Commerce Department.

5 CHAIRPERSON SURO-BREDIE: Thank you.

6 So if we could hear then from the first
7 witness, Mitchell Cooper.

8 MR. COOPER: Thank you, Madame Chair.

9 This committee already has an extensive
10 record of the import sensitivity of the domestic
11 rubber footwear industry, and this brief testimony in
12 behalf of the Rubber and Plastic Footwear
13 Manufacturers Association will supplement that record.

14 Since my previous testimony before this
15 committee on the potential effect of FTAA tariff cuts
16 and since my submission to the ITC on this subject,
17 the domestic rubber footwear industry has shrunk in
18 size from some 7,000 production employees to
19 approximately 3,000.

20 This shrinkage was caused in large part by
21 the decision of Congress, which had been the largest
22 domestic producer for fabric upper, rubber soled

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 footwear, and of Lacrosse, which had been the largest
2 domestic producer of waterproof footwear to shift
3 their production from this country to facilities
4 overseas.

5 The imports of fabric upper rubber soled
6 footwear now take approximately 95 percent of our
7 market, while imports of waterproofed footwear now
8 take approximately 60 percent.

9 There are 26 harmonized system numbers
10 which cover the products of the rubber footwear
11 industry. The Senate version of the recently
12 reenacted Andean trade preference bill exempted those
13 26 categories from immediate duty free treatment for
14 the Andean countries and accorded them instead a 15
15 year phase-out.

16 In an effort to win support of the House,
17 however, the principal Senate sponsors of this phase-
18 out agreed to a narrowing of the list to those
19 categories which constitute the core rubber footwear
20 items currently manufactured in this country.

21 This compromise was reached with the full
22 agreement of the Rubber and Plastic Footwear

1 Manufacturers Association, the American Apparel and
2 Footwear Association, which is the spokesman for non-
3 rubber footwear, and the Footwear Distributors and
4 Retailers of America, the spokesman for domestic
5 retailers.

6 While the rubber footwear amendment failed
7 in conference committee, it is the intention of the
8 Rubber and Plastic Footwear Manufacturers Association
9 to seek an exclusion of its core products from the
10 Andean Trade Preference Act based on rubber footwear's
11 import sensitivity.

12 And at this point I really should
13 interrupt myself to make a correction on some
14 mathematics. The Andean trade preference amendment,
15 which went to the conference committee, listed
16 initially 16 core items. Those were the items which
17 we believed were then being produced by the domestic
18 rubber footwear industry.

19 Since that time, an additional company,
20 waterproof manufacturer, has joined the RPFMA. It's
21 called Onguard Industries. It is the inheritor of the
22 remnants of the old Barter plant in Maryland, and that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 company pointed out one additional item which should
2 be included.

3 And just the other day, very recently, I
4 received word from New Balance that they intend in an
5 inner city factory in Boston to produce one more item
6 that was not previously on the list. So instead of
7 26, we were talking about 16. Instead of 16, we're
8 now talking about 18, and those items are all listed
9 on the bottom of the testimony which I have submitted
10 this morning.

11 If the testimony that you have does not
12 include all 18, I will certainly supplement it.

13 We've experienced recently a dramatic
14 example of why a full exception rather than an
15 extended phase-out, such as the 15 years in NAFTA, is
16 essential to this industry.

17 And I should point out that import
18 sensitivity is even more acute with respect to such
19 FTAA partners as Brazil, Argentina, and Chile than was
20 the case certainly with respect to the Andean
21 countries.

22 And in the current negotiation with Chile,

1 the FMA is also seek a full exemption for the
2 industry's core items, but as I just said, we recently
3 experienced a dramatic example of why a full
4 exception, despite what Ms. Vargo has indicated is the
5 agreement, temporary -- all agreements are temporary,
6 of course, until they are final documents -- the
7 tentative agreement that there should be no
8 exclusions.

9 Let me point out an example of why an
10 exclusion is necessary for this industry. Tingley
11 Rubber Corporation of South Plainfield, New Jersey,
12 which has had a manufacturing presence in this country
13 for about 100 years, recently shifted its operations,
14 except for military contracts, from New Jersey to
15 Mexico, and it did so for the simple reason that with
16 only about seven years to run in the NAFTA duty phase-
17 out, tariffs on rubber footwear from Mexico have been
18 lowered to the point that Tingley has found it
19 necessary to shift its production to Mexico in order
20 to survive against foreign competition.

21 What remains of this industry is convinced
22 that it can survive, provided there is no further

1 whittling of its tariff production, and by now, it
2 should be abundantly clear to all of you that the
3 elimination of duties in rubber footwear would be
4 accompanied by the elimination of domestic rubber
5 footwear employment without any counterbalancing
6 benefit to consumers, since the products of this
7 industry, wherever their source, will retail for what
8 customers are willing to pay.

9 Both the Trade Representative and the
10 Secretary of Commerce have taken note of the unique
11 sensitivity of this industry to imports, and we hope
12 that this committee will conclude that this
13 sensitivity justifies an exemption for at least the 18
14 core categories whose HTS numbers are listed in my
15 testimony, which are essential to the survival of this
16 industry.

17 Thank you. I welcome your questions.

18 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
19 Cooper.

20 I'll turn to Mr. Harman, who will be
21 asking the questions for the panel.

22 MR. HARMAN: Thank you, Mr. Cooper.

1 One question. If you could speak to the
2 competitive dynamic represented by trade with the
3 hemispheric trade partners as opposed to third
4 parties, such as China, in the categories that the
5 U.S. currently manufactures.

6 MR. COOPER: Well, particularly with
7 countries like Brazil.

8 MR. HARMAN: Yes.

9 MR. COOPER: Perhaps to a lesser extent
10 Argentina. Who knows what's going on in Argentina
11 these days? Chile. There is enormous capacity and a
12 great deal of manufacture of rubber footwear.

13 Wage rates in those countries are, I need
14 hardly point out, substantially lower than in the
15 United States. The duties on the products of which we
16 are speaking are very high certainly compared to other
17 duties, including duties even on non-rubber footwear.

18 Any elimination of these duties whether by
19 phaseout of a reasonable period of time or whatever is
20 bound to present an increased incentive to those
21 countries to increase their production of rubber
22 footwear and the shipment of that production to this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 country.

2 So we are terribly concerned about what
3 the potential is.

4 MR. HARMAN: And secondly, could you speak
5 to the strategies that the U.S. companies have
6 developed to remain competitive?

7 MR. COOPER: Yeah.

8 MR. HARMAN: Such as brand name, product
9 quality, differentiation in size, et cetera?

10 MR. COOPER: Well, you've mentioned some.
11 Brand name, quality, differentiation in sizes.

12 Look. The companies that are still here,
13 we're talking about roughly five manufacturers. The
14 other members of the RPFMA, numbering about 15, are
15 suppliers to those manufacturers who are dependent on
16 their success for their own success as suppliers.

17 Given the existing tariff structure, these
18 companies are here and hopefully are here to stay.
19 There's only one fabric upper rubber sole producer of
20 any significance left in this country, and that's New
21 Balance.

22 New Balance is a successful company. It's

1 successful because it has wherever it can develop
2 labor saving devices. It has a wonderful work force.
3 It has an imaginative managerial force. It functions
4 with three plants in Maine, two in Massachusetts, and
5 a plant in California which they don't own, but which
6 manufactures exclusively for them.

7 And their hope, frankly, given the tariff
8 structure and provided that there is no further
9 erosion in that structure, their hope is to continue
10 to grow. They're now number four in the world in the
11 production of athletic footwear not just because of
12 domestic manufacturing, and this is what's important
13 for you to understand.

14 Every one of the companies that I
15 represent imports as well as manufactures in this
16 country, and every morning they wake up and wonder if
17 they're going to introduce a new line or continue to
18 produce an existing line. Should they do it here or
19 should they do it abroad?

20 Thus far, thus far, the balance of
21 interest in each of these companies remains in favor
22 of domestic production. So, again, take a company

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 like New Balance, which imports from all over the
2 world, has licensing agreements abroad for shipments
3 abroad, not back to this country, but nonetheless has
4 been able to cut the mustard in the United States
5 because of its quality, because of shortness of
6 shipment lines, et cetera.

7 So, you know, there's every reason to
8 believe that they've survived thus far, and they will
9 continue to survive. Bear in mind none of these
10 companies expects to go out of business. If you don't
11 want them in the United States, they'll go overseas,
12 and it's up to you in very large part as to where it
13 is this stuff is going to be produced

14 CHAIRPERSON SURO-BREDIE: Does the panel
15 have any further questions?

16 (No response.)

17 CHAIRPERSON SURO-BREDIE: In that case,
18 thank you very much, Mr. Cooper.

19 MR. COOPER: Thank you. Thank you for
20 your attention.

21 CHAIRPERSON SURO-BREDIE: It's my pleasure
22 to introduce the next witness, Thea Lee, Assistant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Director for International Economics of the AFL-CIO.

2 Ms. Lee.

3 MS. LEE: Good morning. Thank you so much
4 for the opportunity to come and present the views of
5 AFL-CIO on behalf of our 13 million working men and
6 women members.

7 The free trade areas of the Americas is a
8 very important issue for the American labor movement,
9 and indeed, for the labor movement of the entire
10 hemisphere, and we've been following the issue pretty
11 closely since 1995, the first Summit of the Americans,
12 when the discussions got underway.

13 But we very much welcome the opportunity
14 to day to come and present our views, and I've
15 submitted my full testimony. So I'll just summarize
16 some of the key issues from our point of view.

17 Clearly how the Western Hemisphere chooses
18 to integrate the economies and the countries will have
19 a huge impact on jobs and wages and working
20 conditions, but also on public policy, the scope of
21 government regulation of public health and the
22 environment and social safety nets throughout the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 hemisphere, and that certainly has been our experience
2 with the North American Free Trade Agreement.

3 These agreements are much more than trade
4 liberalization. They go to the very heart of the role
5 of government, the role of democratic decision making
6 processes, and the kind of input from working people
7 and community activists is very, very important to the
8 ultimate legitimacy and credibility of whatever the
9 product is in 2005 or later.

10 These agreements are often just sold as
11 market access agreements that we're going to lower
12 tariffs between the countries and that has to be good
13 for everybody.

14 They do, of course, lower tariffs, but
15 they do much more, and that's, I think, what we've
16 learned from eight years of NAFTA, that what the free
17 trade area of the Americas will do, just as NAFTA did,
18 is to establish an entire framework of competition and
19 what kind of rules will govern trade within the
20 hemisphere, what kinds of competition are acceptable
21 and what kinds of competition are not acceptable.

22 And it's very important to us that we

1 begin to see the issues of trade competition as more
2 than just commercial disputes. It's not just about
3 whether a particular company has market access or has
4 a market advantage or doesn't, but really much broader
5 than that; that certain kinds of competition, in
6 particular, competition which violates the core labor
7 standards that the international community has agreed
8 to, are destructive, destructive not just to working
9 people in the United States, but destructive to the
10 entire fabric of the development process in the
11 hemisphere and the democratic process.

12 And the same is true, of course, for
13 environmental measures, and as I said before, I think
14 that the way in which these trade agreements or
15 economic integration agreements change the role of
16 government is very important. It's something that we
17 shouldn't neglect. We should give as much attention
18 to it as we can; that how governments are able to
19 regulate public health and the environment and social
20 safety nets is important to people living here.

21 And the people living here in the United
22 States or people living in Brazil or Argentina or

1 Costa Rica or Dominican Republic believe that most of
2 the decisions that they're making about domestic
3 regulation are going to be made through electing
4 representatives, who will then make decisions which
5 are thought out and sometimes very contentious,
6 bitter, domestic political debates about the proper
7 level of environmental regulation, the proper level of
8 the minimum wage, the proper way of regulating union
9 organizing.

10 But those domestic disputes should be
11 resolved, in our view by parties that are elected, and
12 we don't have an elected government for the entire
13 hemisphere, and therefore, I think we should be very
14 cautious as to how we change th balance of power
15 between the role of government and the role of a trade
16 dispute body; that these bitter domestic disputes
17 should not be resolved out of the public eye in a
18 trade tribunal with three people behind closed doors,
19 where the proceedings aren't made public.

20 I don't think that's what people in the
21 hemisphere are expecting their policy making process
22 to be changing as a result of signing what's called a

1 free trade agreement. And I think that's certainly
2 one of the key issues that we've grappled with, and I
3 think you'll hear more about that over the course of
4 the day, about the FTAA.

5 Let me just go over some of the key issues
6 from our point of view. The first one obviously is
7 the protection of workers' rights, and this is not a
8 new issue probably to anybody at the table, but that
9 it is our view that the free trade area of the
10 Americas must include enforceable workers' rights in
11 the core of the agreement, certainly nothing less than
12 what's in the Jordan free trade agreement, that is, a
13 commitment to honor the core labor standards of the
14 ILO, freedom of association, the right to organize and
15 bargain collectively, and the prohibitions against
16 child labor, force labor, and discrimination in
17 employment.

18 But also, an enforceable commitment that
19 countries will, in fact, effectively enforce their
20 domestic labor and environmental laws; that this is an
21 important combination, one, the commitment to the
22 international core labor standards and, on the other

1 hand, the commitment to enforced domestic labor laws,
2 which as we all know are much more detailed and much
3 more concrete than the international standards, but
4 it's often a struggle just to enforce domestic laws,
5 even in the United States of America, even in the
6 richest countries, but certainly in the poorest
7 countries.

8 And we do believe that it's important
9 within the context of an international trade agreement
10 to be able to bolster the obligation to enforce
11 domestic laws and to live up to international
12 obligations.

13 Certainly, and I think, again, this is an
14 issue that's come up in the past, but that if, in
15 fact, the free trade area of the Americas doesn't
16 include enforceable workers' rights, we will, in fact,
17 be stepping backwards from the kind of protection we
18 have in current law with respect to virtually all of
19 Latin American countries; that we have a variety of
20 trade relationships in Latin America that do include
21 enforceable commitments to honor workers' rights.

22 Certainly the GSP is the most important,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and that affects virtually all of the countries with
2 the exception of Mexico and Canada. The Caribbean
3 Basin agreement and the Andean pact have some workers'
4 rights provisions. We're very troubled by what we
5 perceive from the outside as the course of the FTAA
6 negotiations that from everything we can see, there
7 has been no formal discussion of workers' rights
8 within the context of the FTAA to date. There's no
9 working group. There's no chapter. There's no study
10 group to address workers' rights issues. There's no
11 language in the draft text that's been made available,
12 even that bracketed text with however many hundreds of
13 thousands of brackets. There's not even a bracket on
14 workers' rights, with the exception of a very weak
15 provision in the investment chapter that doesn't go
16 much beyond what was in the NAFTA environmental
17 chapter.

18 So we'd be very troubled by a course of
19 negotiations that would take us to a place where the
20 FTAA would grant additional market access and yet step
21 backward in the very important area of workers'
22 rights.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And I guess I'm running short on time. So
2 I'll just signal that the other issues that we
3 consider very important, the investment chapter of the
4 free trade area of the Americas. This has been
5 tremendously controversial under the NAFTA, and we
6 think very, very troubling, the idea of investor to
7 state dispute resolution over very important issues of
8 environmental and public health regulation we find
9 extremely troubling.

10 The provision of services and whether, in
11 fact, the FTAA will support or undermine the provision
12 of public services, particularly public health and
13 education, but even postal services, other areas where
14 there is often a blurry line between the public and
15 the private provision of services.

16 We don't believe that it would be an
17 appropriate role for the FTAA to tilt that balance in
18 favor of privatization away from public provision of
19 services in key areas.

20 Government procurement in our view must
21 take into account some of the social issues, as well
22 as the commercial issues. Protection of workers'

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 rights, human rights are legitimate areas that should
2 be considered under government procurement, and the
3 development concerns of our sisters and brothers in
4 the hemisphere are very important to us, particularly
5 of debt relief.

6 We do believe it's appropriate in the
7 context of a free trade area of the Americas to
8 address debt relief and to give debt relief to some of
9 the developing countries so that they can provide
10 those basic health and education and infrastructure to
11 their people.

12 And let me end there and take your
13 questions.

14 Thank you.

15 CHAIRPERSON SURO-BREDIE: Thank you, Ms.
16 Lee.

17 We will have two members of the panel
18 posing questions. Betsy White from the Department of
19 Labor and Bud Clatanoff from the USTR.

20 MR. CLATANOFF: Good morning, Thea.
21 Thanks for coming.

22 Just briefly, you called for inclusion of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 enforceable worker rights standards in the core of the
2 agreement, and I'd sort of like to get your opinion
3 this morning on those enforcement mechanisms.

4 In particular, I think you're aware that
5 remedies or enforcements in trade agreements often are
6 imposed upon different sectors in the violations, if
7 you will, so that Country X imposes punitive tariffs
8 on orange juice because Country Y improperly
9 restricted imports of steel.

10 Does that bother you that something like
11 that could happen in worker rights provisions? And if
12 so, what do we do about it?

13 MS. LEE: On dispute resolution, our view
14 has been that we'd like the labor rights provisions to
15 be enforced by essentially the same mechanism as is
16 available for the commercial disputes, and that, I
17 think, begs a lot of the questions. You know,
18 whether that's an effective or appropriate way to
19 enforce any of the commercial provisions in the
20 agreement I think is a much broader question.

21 And I guess at the end of the day the test
22 is going to be effectiveness and whether there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 meaningful economic consequences to the violation of
2 workers' rights and whether those are essentially the
3 same as those that are used to enforce the commercial
4 provisions of the agreement is, I guess, the bottom
5 line for.

6 And I guess, you know, every day if you
7 read the trade press you're always seeing -- there was
8 one just this morning about the Andean pact and the
9 issue that, you know, the Andean countries are being
10 told they may lose their trade benefits because a
11 whole number of companies are having commercial
12 disputes and that the message to the Andean countries
13 is very, very strong; that they need to resolve these
14 commercial disputes, pay off the fines that are owed
15 to companies for various breaches of contract and so
16 on, or they may lose their trade benefits.

17 And I guess we've never seen the workers'
18 rights provisions of any of our trade agreements
19 receive the same level of priority and emphasis, where
20 it's constantly in the headlines that trade benefits
21 are, in fact, contingent on countries respecting basic
22 human rights of their workers, the fundamental rights

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the work place.

2 And so that's, I think, more important to
3 us than whether the trade sanction happens to be in
4 the same sector or in a different sector. I guess the
5 key issue is whether it works, whether it, in fact,
6 remedies the abuse of rights or not.

7 MR. CLATANOFF: As an aside, I can assure
8 you that the Andean countries are being reminded of
9 the worker rights provisions. So Andean trade
10 preferences.

11 My second question is in your written
12 testimony, where it's more lengthy you mentioned this
13 morning, but the fact that investment disputes are
14 settled in sequence.

15 Do you think the transparency objectives
16 in the recently enacted Trade Promotion Act are
17 adequate to address your concerns?

18 MS. LEE: No, I don't think that. I think
19 they're a step in the right direction for sure, and we
20 welcome all of the steps in the right direction. We
21 welcome the release of the draft text of the FTAA as
22 a big improvement over what was available under NAFTA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 when the text was leaked.

2 But I guess what we'd like to see is an
3 assurance not just that, you know, the individual
4 government positions are made available, and I know
5 that the United States, I think, has been among the
6 best of countries in making its own positions
7 available to the public, but the whole dispute
8 settlement process happening behind closed doors is
9 actually difficult even to keep track of which cases
10 are being brought.

11 There are, I guess, newspaper clippings
12 and anecdotes and other ways of tracing the investment
13 disputes under NAFTA, but I think it should be just as
14 a matter of course that any time that there's a
15 challenge that it's made public and that the dispute
16 settlement papers and the briefs and so on are made
17 public.

18 MR. CLATANOFF: Okay. Thank you.

19 Betsy?

20 MS. WHITE: Thank you.

21 You said that there's nothing going on in
22 the FTAA on labor. Let me assure you it's not for

1 having not tried. Having sat through a lot of
2 ministerials and TNT meetings and such, it has been to
3 date an impossible struggle, but let's hope that
4 things improve.

5 I had a question that was raised by your
6 oral testimony as opposed to your written testimony,
7 and that is that the emphasis you place on how the FTA
8 affects government policy and the ability to regulate
9 and that it becomes this huge sort of FTAA super
10 government affecting a country's ability to regulate,
11 but yet you call for more regulation and more bringing
12 into the trade field labor rights issues.

13 And I'm wondering if you see any dichotomy
14 in the fact that you call, on the one hand, for less
15 FTAA overall scrutiny of individual government's
16 rights and the need to put worker rights into the FTAA
17 as you're proposing.

18 MS. LEE: I think that's a good question,
19 and I would say I don't see it as being inconsistent
20 and for two reasons. One is that the workers' rights
21 that we're talking about protecting under the FTA are
22 rights that every country in Latin America or in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 FTAA process has agreed to abide by by virtue of their
2 membership in the international labor organizations.

3 So these are not rights that are being
4 imposed by the United States or externally. These are
5 rights that voluntarily every single country in the
6 hemisphere has already agreed to respect, promote, and
7 realize under their membership in the ILO.

8 And the second piece of the workers'
9 rights that we're talking about is countries agreeing
10 to effectively enforce their own laws. So, again,
11 that doesn't seem like a trampling of sovereignty or
12 an external imposition of new obligations; rather, a
13 strengthening of obligations that countries have
14 already agreed to in other areas.

15 And I think that's a little bit different
16 from a question of, let's say, citing a toxic waste
17 company and the conflict that might happen between
18 local environmental regulation and a company's desire
19 to sell a product; that those are different issues
20 that haven't, in fact, been resolved by any kind of
21 democratic debate and discussion at that level.

22 I had one other question in terms of

1 promoting worker rights and sort of accompanying the
2 FTAA. The TPA legislation does suggest that there be
3 consultative mechanisms, that there be technical
4 assistance to countries to improve their worker rights
5 laws if necessary.

6 How do you see these kind of supportive
7 provisions as relating to and supporting your call for
8 improvements in the enforcement of worker rights?

9 MS. LEE: We think the consultative and
10 the cooperative mechanisms that the U.S. government
11 does engage in and are called for under TPA are very,
12 very important and should be supported. We're very
13 supportive of all kinds of transfer or resources in
14 order to improve enforcement of workers' rights. We
15 think that's a good use of U.S. resources.

16 We don't think it's something which can
17 stand on its own, and that's been our experience in
18 the past, is that if all you have in place is
19 consultative and cooperative mechanisms, it's
20 generally something that neither the governments nor
21 the companies take seriously.

22 And I think we've seen that with the NAFTA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 labor side agreement, that the pieces of the agreement
2 that are entirely cooperative are pretty worthless,
3 and that the only time when the companies and the
4 governments really pay attention is when there is the
5 possibility of some sort of economic sanction at the
6 end of the day, and that's when they start paying
7 attention to the rules. That's when they start trying
8 to improve their enforcement and so on.

9 So the consultative and the cooperative
10 mechanisms are essential, but they're by no means
11 sufficient and, in fact, pretty meaningless on their
12 own. So they're a good supplement to enforceable
13 commitments.

14 CHAIRPERSON SURO-BREDIE: Does the panel
15 have any other questions?

16 (No response.)

17 CHAIRPERSON SURO-BREDIE: Thank you, Ms.
18 Lee.

19 Our next witness is Mr. Steve Lamar,
20 Senior Vice President of the American Apparel and
21 Footwear Association.

22 MR. LAMAR: Thank you, Madame Chairman.

1 My name is Steve Lamar, and I'm Senior
2 Vice President of American Apparel and Footwear
3 Association. We're the U.S. national trade
4 association of the apparel and non-rubber footwear
5 industries.

6 On behalf of AAFA, I'm pleased to offer
7 comments on the FTAA, and I wish to offer the
8 following observations which I closely track many of
9 the points that we've made in previous submissions to
10 USTR in this process.

11 First and foremost, the FTAA should
12 provide an efficient means to manufacture, distribute,
13 and service customer demands within the Americans.
14 The ability to operate in a transparent and
15 predictable business environment is paramount.

16 Within the FTAA, the ability to move
17 product free of all tariffs and non-tariff barriers
18 must be guaranteed, in addition to eliminating duties
19 for goods that originate in the FTAA, the final
20 agreement should require all FTAA countries to
21 prohibit determining fees and other special and other
22 special assessments that are imposed on eligible

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 shipments.

2 Likewise the agreement should prohibit
3 reference pricings or customs valuation practices that
4 discriminate against imports as well as serve no
5 functional value other than statistical reporting.

6 The final agreement should explicitly
7 provide provisions for those goods that are currently
8 afforded duty free entry under NAFTA, CBTPA, and the
9 recently enacted Andean Program.

10 Because these last two programs expire for
11 beneficiary countries once the FTA takes effect, it's
12 imperative that benefits conferred by those provision
13 be captured in some sort of seamless manner by the
14 FTAA such that companies operating under those
15 programs do not experience gaps in market access.

16 Regarding rules of origin, we're dismayed
17 to see that some countries are still contemplating
18 special rules for of origin on textiles and apparel.
19 By that I mean Chapters 50 through 63.

20 As noted previously, we strongly favor the
21 approach taken in the so-called Holbrooke Cardin
22 rules, which is consistent with a single tariff shift

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 approach. This confers origin based on assembly.

2 Likewise on footwear, we support the
3 tariff shipped approach and do not favor extension of
4 the NAFTA rule to the FTAA and particularly regarding
5 the prohibition of unformed uppers.

6 Our sticker rule (phonetic), while
7 appearing to promote regional input, merely imposes
8 restraints that drive production and trade out of the
9 free trade area. We think that should be discouraged.

10 On safeguards, the FTAA should have strict
11 limitations both on the thresholds that must be
12 triggered before they can be used, as well as on the
13 duration and ability to be on the -- safeguards that
14 are extended.

15 Safeguards should sunset automatically
16 unless the complaining party can affirmatively prove
17 the continuation of the injury. The process should be
18 both transparent and predictable.

19 Customs operations, including
20 documentation requirements, should reflect practices
21 of the trade. Companies should not be required to
22 keep or file paper work that is now kept in electronic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 format or which is no longer generated for legitimate
2 commercial reasons.

3 Extraneous paper work providing logistical
4 obstacles and costs can greatly undermine the gains
5 associated with the FTAA.

6 At the same time, we strongly favor
7 harmonization of customs operations to encourage the
8 border free environment within the hemisphere. That
9 is a key goal of the FTAA.

10 The customs should be designed to permit
11 a 24 hours, seven day per week operation with one
12 single filing of shipment header data in order to
13 export and import the related shipments. Each member
14 country should also commit to preventing the movement
15 of illegal narcotics, illegal aliens, and tariffs,
16 weapons, and commercial cargo.

17 Sanctity of trademarks is critical to the
18 health of our apparel and footwear brands. We
19 strongly favor protections for trademarks as part of
20 a comprehensive IPR monitoring and enforcement regime.

21 As in the NAFTA, AAFA favors the
22 development of harmonized labeling schemes to bring

1 the different countries' care origin, ID, and fiber
2 content labeling practices for garments and footwear
3 and footwear prospective origin into a single
4 standard.

5 AAFA members also strive to insure that
6 the products are produced under legal, ethical, and
7 humane conditions. We endorse the worldwide
8 responsible apparel productions. The acronym is WRAP,
9 which contains 12 principles that are monitored
10 through an independent factory inspection program.

11 More than a dozen other organizations in
12 the hemisphere have endorsed this program as well.
13 These principles reflect and promote fair labor, anti-
14 narcotics, security environment, and anti-trans-
15 shipment goals.

16 Finally, as with the WTO agreement on
17 government procurement, the appropriate annex, and if
18 we can convey this to the government procurement
19 people who I guess are not here today, the appropriate
20 annex should note that the United States retains the
21 right to acquire the clothing and textiles produced
22 for the U.S. Department of Defense to be made in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 U.S. entirely of U.S. inputs.

2 This tracks an important national security
3 principle known as the Barry Amendment that has been
4 a central component of U.S. procurement law for more
5 than half a century, and which was recently reendorsed
6 by the U.S. Congress.

7 And with that very simple statement, we'll
8 take any questions.

9 CHAIRPERSON SURO-BREDIE: Thank you very
10 much, Mr. Lamar.

11 Questions will be asked by Andrea Malito
12 of the Department of Commerce and Betsy White of the
13 Department of Labor.

14 MS. MALITO: Thank you.

15 Good morning. Thank you for your remarks,
16 Mr. Lamar.

17 I wanted to explore with you a little bit
18 your experiences through your successes in working
19 with the Worldwide Responsible Apparel Production,
20 with WRAP, and wondering from that experience what
21 recommendations you might make for insuring that
22 products imported into the United States are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 manufactured responsible.

2 MR. LAMAR: The key to WRAP, I think, is
3 education. It's getting different people aware of the
4 program. The way the WRAP program works is it sort of
5 build into the marketplace the requirements to produce
6 garments under socially responsible conditions. It
7 works basically by getting people at the factory
8 manager level aware of what they need to do.

9 The factories put in place those processes
10 and procedures so that when somebody wants to inspect
11 that factory, they know that the procedures and the
12 activities that they're doing are not things that are
13 going to be in place that day, but are things that are
14 backed up by record keeping, by extensive experience.

15 And one of the things that we've learned
16 is when you show people a code of conduct versus --
17 WRAP is 12 principles. Other codes of conduct have
18 ten, 12, 15, whatever they might be.

19 People will look at them and say, "Gee,
20 this is a no-brainer. We need to do this."

21 But when you back it up by, well, in order
22 to prove this, you have to be able to answer these 45

1 questions affirmatively. In order to be able to
2 answer those 45 questions affirmatively, you have to
3 be able to do these 216 things.

4 And pretty soon people say, "Geez, you
5 mean I've got to keep records on this person and this
6 person and this practice and how I do this?"

7 And that takes a while to build some of
8 those practices into the system, and we find that a
9 lot of factory managers are signing up for the
10 program. I think WRAP is about to hit 1,000 factories
11 that have applied for the program and are doing very,
12 very well.

13 But as they sign up for this program,
14 people look at these very thick books they get and
15 say, "Wow, that's a lot of work that we've got to go
16 through." So then there's a little bit of reality.
17 So part of it is training at the factory level, what
18 they need to do.

19 In many cases it's documenting the
20 practices through all that you're doing so they can
21 prove it to an unbiased party that, in fact, they're
22 doing these things because people have some security.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 A lot of it also is making sure that more
2 information about the program gets out. The way that
3 our industry communicates the program is through the
4 buyer-seller relationship. Retailers-importers are
5 increasingly beginning to require that garments that
6 are imported from factories or that are made in
7 factories, whether they're made in the U.S. or whether
8 they're made offshore, are made under WRAP principles.

9 Already we have to require that the
10 garments are made in compliance with a number of other
11 practices that might occur. Labeling practices, for
12 example comes to mind or flammability, anti-
13 flammability for fabric, and this is just one more
14 requirement that people will put in place.

15 In order to get business, you've got to
16 meet the requirements of WRAP, and so people start
17 signing up for WRAP, and these are just some of the
18 ways.

19 What it ends up doing is that it really
20 ends up building into the marketplace how, you know,
21 good labor needs to be done. And as I said, it also
22 addresses anti-narcotics, environmental issues, anti-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 trans-shipment. Anti-security falls in there as well
2 as part of the narcotics component.

3 MS. WHITE: I'd sort of like to build on
4 your response to that question and just ask if you can
5 give some examples of some tangible results in
6 specific factories and how do factories react to the
7 idea that there may -- I assume there are independent
8 inspectors that come in. Has there been like a
9 relationship between an inspection and improvements?

10 MR. LAMAR: Yeah. From what I understand,
11 and I'm not privy to the reports that come in, it will
12 go through the WRAP, which is a separate entity from
13 our association, a separate board, and they evaluate
14 the reports that come in.

15 What will happen is when reports come in
16 that demonstrate a need for corrective action -- and
17 as I understand it, there's actually two levels of
18 corrective action. There was corrective action where
19 something that's in jeopardy, you know, a worker's
20 health is in jeopardy, environmental health is in
21 jeopardy, and those need to be fixed immediately, and
22 those are done sort of on the spot, and then there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ones where it may not be an immediate requirement, but
2 it's certainly something that has to be complied with
3 before certification can be generated for that
4 facility.

5 But as I understand it though, there are
6 times where there have been a number of cases where
7 individual factories have had to go and approve their
8 activities, either put in place a procedure to
9 demonstrate compliance with something or to start
10 doing that in the first place.

11 I mean they may not have realized that the
12 law said you can't hire anyone under a certain age.
13 They were, you know, not aware of what that law was,
14 and that kind of goes back to another answer to your
15 question before.

16 One of the things that the folks at WRAP
17 have been telling us is that the foreign labor
18 departments have really been finding WRAP program very
19 useful to them because it kind of gives them a road
20 map. They know that when they're working with WRAP
21 factories -- and these are factories that are used to
22 the concept of people coming in, performing an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 evaluation, making sure that things are up to code,
2 and in some cases that may not have really been done
3 before.

4 In other cases, the WRAP people have gone
5 to the labor departments, and in several cases at the
6 labor departments' invitation, and helped train them
7 on what the principles of the WRAP were all about.

8 So if the foreign labor inspectors are
9 going to different factories, they know what standards
10 that factory is shooting for. So they've got their
11 own laws. They've got their WRAP codes of conduct,
12 whatever other codes of conduct might be out there so
13 that they have sort of a base of where they're going
14 from.

15 And then thirdly, it also gives them a
16 sense that they've got, say, 200 factories to work
17 for, to inspect and 63 of them have been certified by
18 WRAP or some other organization. Then maybe they can
19 concentrate their resources on the 137 or so that are
20 not.

21 It doesn't mean they're going to ignore
22 the 63, but it gives them a place to concentrate some

1 of their resources, where no inspection may have
2 occurred. And that's one of the other experiences
3 that we're finding.

4 MR. HARMAN: Steve, how would you answer
5 the argument that the single transformation rule would
6 allow something of a unilateral windfall to the likes
7 of, say, China on fabric if all that has to be done is
8 mere assembly into garments in this country?

9 MR. LAMAR: The more requirements you put
10 on the assembly of garments means there is more
11 documentation, and there's more hurdles and costs
12 associated with the input, which each of those acts as
13 a slight disincentive to the production of the
14 ultimate garment in that region.

15 The best example is our experience under
16 the Caribbean Basin. The Caribbean Basin is a U.S.
17 fabric, and the fabric itself has to be made with U.S.
18 yarn, as you know. And that supply chain has to be
19 fairly extensively documented.

20 And what we're finding is that the cost of
21 the fabric and the yard plus the supply chain
22 documentation sometimes eats up the duty preference

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and then more that's quoted under the program.

2 And what that does is that chases the
3 entire assembly out of the preference program
4 entirely, and so people find that it's cheaper to
5 produce the entire garment made entirely from Chinese
6 fabric, entirely from Indonesian yarn or whatever it
7 might be, in China or wherever it might be, brought
8 back to the U.S. and paid full duty, will be less
9 expensive than the garment that's produced inside the
10 preference program with the hemisphere.

11 We're starting to see this in NAFTA as
12 well. If, however, you are locating a production
13 there, you acquire the assembly to be done, the inputs
14 can come from a lot of different places.

15 Then what you see is a very strong
16 interest in people producing there. Yeah, they won't
17 have to use U.S. fabric or U.S. yarn. It doesn't mean
18 they won't. It means they don't have to. They still
19 can do that.

20 In fact, they may find that they want to
21 do it, use U.S. fabric, U.S. yarn, U.S. cotton. It
22 gives a lot of different flexibility, and the inputs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 can ultimately be used.

2 We think that the more you can attract the
3 apparel production to this hemisphere, the more likely
4 you're going to generate a customer for some part of
5 the textile chain, whether it's the cotton, the yarn
6 or the fabric, maybe all three, the trimmings, the
7 equipment makers.

8 CHAIRPERSON SURO-BREDIE: Any other
9 questions?

10 (No response.)

11 CHAIRPERSON SURO-BREDIE: Thank you very
12 much, Mr. Lamar.

13 Our next witness is Charlene Stocker,
14 Senior International Services Manager, American
15 Association of Exporters and Importers.

16 Good morning.

17 MS. STOCKER: Good morning. On behalf of
18 the members of the American Association of Exporters
19 and Importers and the million of their employees
20 across the country, let me thank the Office of the
21 U.S. Trade Representative and the members of the Trade
22 Policy Staff Committee for initiating public dialogue

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 on the free trade area of the Americas and providing
2 us this opportunity to provide some input.

3 My oral comments this morning will be
4 brief. Although construction of a hemisphere trade
5 agreement is an enormously complex, we believe it is
6 important to remain focused on a few goals.

7 First, the United States and other
8 countries at the negotiating table should use the FTAA
9 to comprehensively remove trade barriers. You may be
10 thinking, "Well, of course, free trade agreements
11 should remove trade barriers." But, in fact, free
12 trade agreements often leave significant barriers in
13 place.

14 For example, as sweeping as the NAFTA
15 appeared to be when it was signed, its trade benefits
16 are subject to highly complex conditions, and many
17 trade barriers were either dealt with superficially or
18 kept off the table altogether.

19 When any party negotiating a trade
20 agreement insists on protecting one or more of its
21 sensitive areas, the other parties will also insist on
22 retaining an equivalent level of protection for their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 own weak players.

2 The aggregate of all these protections is
3 large in the NAFTA with only three parties involved.
4 If we repeat that in this hemisphere, the free trade
5 agreement compromising all of the nations, the total
6 of these carve-outs will be enormous.

7 Ironically, the very sectors where open
8 competition could produce the greatest consumer
9 benefits, there remains substantial protection.

10 We encourage our FTAA negotiators to
11 depart from the tradition of seeking exemptions for
12 our inefficient industries that we pay for by giving
13 others at the table reciprocal exemptions that lock
14 out our competitive exporters.

15 I would like to focus my remarks on three
16 specific areas: regional value content, certification
17 of eligibility for preference, and protection of
18 confidential information.

19 We urge you to keep the rules of the
20 agreement simple, particularly with regard to trade
21 and goods. Free trade cannot be achieved in a
22 regional agreement by simply eliminating the tariffs.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Tariff elimination in a regional agreement is always
2 conditional.

3 If the cost of complying with the
4 condition approaches or exceeds the cost of the duty
5 waived, nothing is accomplished. Let me reiterate the
6 point that we made in our written statements.
7 Government should seek to limit to the extent passable
8 the use of regional value content as a criterion for
9 preferential treatment.

10 In general, value content rules under the
11 NAFTA have been extremely onerous for traders. The
12 FTAA is unlikely to reach its full potential for
13 success if similar cumbersome value content rules are
14 adopted in FTAA.

15 Therefore, AAEI urges USTR to work toward
16 an agreement based on more straightforward tariff ship
17 rules. A hemispheric trade agreement often
18 potentially enormous economic and political benefits,
19 but only if the government involved can see more of it
20 as less than tax loopholes.

21 Revenue authorities have an unfortunate
22 tendency to see themselves as losers in free trade

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 agreements. They typically react by making it
2 unnecessarily difficult and even perilous for traders
3 to claim a tax exemption.

4 The tendency already is appearing in the
5 FTAA. Our own government representatives should not
6 give it encouragement. One of the most useful
7 innovation in the NAFTA is that it places primary
8 responsibility for certifying eligibility on the goods
9 on the producers and the exporters.

10 This tacitly acknowledges the futility of
11 placing that responsibility on the importer. Because
12 the NAFTA importer may responsibly, but not recklessly
13 rely on a certificate executed by a responsible party
14 in another NAFTA country, the importer's risk is
15 limited to the payment of duties. The certificate is
16 shown to be invalid if that happens.

17 Barring knowledge of reckless ignorance of
18 a certificate's flaws, there is no importer liability
19 for penalties. That liability is placed where it
20 belongs, on the producer and the exporter who execute
21 invalid certificates.

22 Because the risk is limited, importers in

1 NAFTA countries are more likely to utilize the NAFTA
2 by seeking suppliers in other NAFTA countries.
3 Without this, the NAFTA's effect would undoubtedly
4 have been more limited.

5 Unfortunately, we understand that an
6 effort is already underway to roll back this advance
7 in the FTAA. To revert to the previous practice of
8 holding an importer responsible for the validity of
9 certificates executed by foreign manufacturers could
10 be lethal to the FTAA.

11 If USTR intends the FTAA to be more than
12 merely another notch in its trade agreement belt, if
13 it wants the FTAA to have a real effect on trade
14 patterns within this hemisphere, and if it wants it to
15 happen in this decade, it must design the FTAA to
16 create an environment in which millions of people who
17 don't know each other are willing to do business with
18 each other and able to do so without taking
19 unreasonable risk.

20 That environment cannot exist if importers
21 are subject to penalties for the mistakes of their new
22 foreign business partners. The United States and its

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 partners in the hemisphere should use the FTAA to
2 begin to build a zone of confidence in which the high
3 percentage of goods in trade can cross borders without
4 inspection or special documentation.

5 This is desirable for a couple of reasons.
6 First, it reduces the time and cost involved in the
7 transaction between FTAA partners, which makes free
8 trade in FTA efficient and effective.

9 And, second, as trade grows, the part of
10 the FTAA in the countries whose borders regulatory
11 agencies continue to perform their mission in
12 conventional ways will be unable to expand and keep
13 pace. They will increasingly interfere with trade and
14 be less effective at their important mission.

15 In our written statement, we suggested
16 several ways in which the FTAA partners can begin to
17 build a zone of confidence that goes beyond the
18 conventional framework of trade agreements. I will
19 not repeat those recommendations here, but I would
20 like to mention one confidence building measure that
21 is easy to implement and critical to my company,
22 Proctor & Gamble and to all of the members of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 AAEI: agreement on protection of confidential
2 information.

3 Once the FTAA is operational, customs
4 administrations in the FTAA countries will have more
5 information than they've had in the past and more
6 information about more companies. We acknowledge the
7 need of government to have trade information for
8 revenue collection, health and safety protection,
9 effective and efficient court operations, and
10 especially border security.

11 However, businesses need from these
12 governments in which they entrust this data a
13 commitment to insure its confidentiality. There are
14 very few companies that will risk disclosure of
15 critical information simply to obtain the benefits
16 that the FTAA has to offer.

17 The FTAA government should acknowledge and
18 respect business' concerns that this information
19 should not be publicly shared. The FTAA represents a
20 huge economic opportunity for the United States. We
21 should focus on the gain mainly because the U.S.
22 market is already largely open to trade from other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 FTAA markets.

2 Specifically, by the time the negotiators
3 begin in earnest in this session, 28 of our 33 FTAA
4 trading partners will already have duty free access to
5 the U.S. trade market, while the U.S. will only have
6 duty free access to three. We are delighted to see
7 we're moving toward an FTAA. It has been long
8 awaited.

9 We are pleased that we're taking the
10 initiative promptly, shortly after receiving
11 negotiating authority. We hope that you and your
12 counterparts in the government will use the FTAA to
13 create an FTAA which is not bound by trade hostile
14 counterparts of the past, but opens the world to the
15 free trade in this hemisphere.

16 CHAIRPERSON SURO-BREDIE: Thank you very
17 much, Ms. Stocker.

18 The first question will be asked by
19 Bennett Harman, and then we'll turn to Andrea Malito
20 for the Commerce Department.

21 MR. HARMAN: Thank you.

22 You addressed the issue of where the

1 liability is assigned in the transaction, and in our
2 experience there have been some challenges with
3 holding exporters responsible in third countries when
4 you're relying on the jurisdiction of foreign
5 governments.

6 Could you speak to the argument that it
7 should be possible for importers to build into their
8 contracts the liability, which we would in one
9 scenario impose on imports in the case of invalid --

10 MS. STOCKER: The exporter is the only
11 person who has made and taken that good and is
12 claiming it is of origin of that country. They're the
13 only ones who have the information of all o their
14 supplies and can meet the regulations with regard to
15 the transformation or the content or whatever is
16 necessary in that.

17 If you move that good or that
18 responsibility, it has to be with that exporter, and
19 if a contractual agreement is made between an importer
20 that says the exporter must supply that, that is
21 possible. However, we would like that documentation
22 to be included in the export as it moves through the

1 system so that everyone in the whole chain has the
2 information and that there won't be any question with
3 regard to reversal and removal of that benefit one the
4 import is finally made in the country of delivery.

5 MS. MALITO: Thank you.

6 I had a question regarding your comments
7 about business confidential information. You said
8 that you felt it was important that governments
9 respect the confidentiality. I was curious whether
10 there were any particular practices that you were
11 aware of that caused concerns, and also whether there
12 were any specific procedures that you might have in
13 mind that would allay some of the concerns that you've
14 expressed.

15 MS. STOCKER: Yes. Some of the issues
16 come in regard to the accumulation of the data under
17 the harmonized tariff codes. If the data is offered
18 on a country-by-country basis or industry-by-industry
19 basis, it isn't of concern. It's where this
20 information is tied specifically to an exporter or an
21 importer's identification number, where other
22 companies, therefore, could look at the data and know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 what the marketing plans of a particular company are.

2 So as an example, with Proctor & Gamble,
3 if we would be moving X product or a soap manufactured
4 product from Country A to Country B, they are able to
5 read or our competition is able to read that we have
6 marketing plans for moving special kinds of soap from
7 Country A to Country B, and then that could be
8 circumvented by another company.

9 So what we like to see is an accumulation
10 and not a specific reporting by individual company
11 names and identification numbers.

12 Some of the examples currently are in the
13 PEERS data that exists and that you have to
14 specifically request to not have your data be reported
15 in the PEERS, if you're familiar with the PEERS
16 system. And it takes a lot to get your name and
17 information out of PEERS, especially when you're a
18 company like us that are 27, 28 different EIN numbers.

19 CHAIRPERSON SURO-BREDIE: As there are no
20 further questions, we thank you, Ms. Stocker.

21 MS. STOCKER: You're welcome.

22 CHAIRPERSON SURO-BREDIE: We welcome back

1 to USTR our next witness, Ambassador Myles Frechette,
2 President of the Council of the Americas.

3 Good morning. We'll give a minute for
4 everybody to collect testimony.

5 Can those in the back hear the witnesses
6 and the response?

7 PARTICIPANTS: No.

8 CHAIRPERSON SURO-BREDIE: Could those in
9 the back move forward then? Because otherwise -- we
10 will have amplification this afternoon. I will also
11 ask the witnesses please to speak loudly so you can be
12 heard even though your back is turned to the public.

13 Okay. We will start now then with our
14 next witness, Ambassador Myles Frechette.

15 AMBASSADOR FRECHETTE: Good morning. I'm
16 Ambassador Myles Frechette, President of Council of
17 the Americas. It's a pleasure to be here to talk
18 about the free trade area of the Americas, the FTAA,
19 that we've been talking about for so long.

20 This is an undertaking that will lead to
21 the economic empowerment of 800 million people in 34
22 democratic countries currently producing some \$13

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 trillion in output.

2 I'm especially pleased to be here with you
3 today because ten years ago I was on the other side of
4 the microphone. From 1990 to 1993, I was Assistant
5 USTR for Latin America, the Caribbean, and Africa.

6 At that time, one of my key
7 responsibilities as the Enterprise for the Americas
8 initiative, which helped to crystallize sentiment in
9 the hemisphere for a free trade agreement that
10 embraces the entire region and laid the ground work
11 for the current effort.

12 I'm very pleased to be back here at USTR,
13 this time with the Council of the Americas, as this
14 long process moves toward a successful conclusion.

15 As you know, the Council of the Americas
16 is a business organization dedicated to promoting open
17 markets, economic integration, democracy and the rule
18 of law in the Western Hemisphere. In a meaningful
19 way, the free trade area of the Americas is the
20 council's very reason for existence.

21 As I alluded to earlier, the concept of
22 hemispheric free trade zone is not a new one. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 current effort is the culmination of decades, perhaps
2 even centuries of thought, dialogue, and economic
3 development.

4 Since 1965, the Council of the Americas
5 has helped to move that dialogue forward as a leading
6 voice for hemispheric business. We have published
7 reports. We've hosted conferences, led lobbying
8 campaigns, and we've brought people together around
9 the hemisphere, all in support of hemispheric economic
10 integration.

11 Through numerous administrations, the
12 council has been at the forefront of efforts to bring
13 this hemisphere together. We were there for the
14 Canada-U.S. or U.S.-Canada free trade agreement. We
15 were there for the North American free trade
16 agreement. We were there for the Caribbean Basin
17 initiative. We were there for the Andean Trade
18 Preference Act and the now ATPDEA. We were there for
19 every day of the extensive campaign that recently
20 resulted in the reauthorization of trade promotion
21 authority, the TPA.

22 Now, as we have been since 1965, we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 here for the FTAA, which we believe offers tremendous
2 opportunities for the United States and its neighbors
3 in the Western Hemisphere.

4 The council believes that the benefits of
5 trade and open markets are apparent and well
6 documented. Our own series of reports on the impact
7 of NAFTA have shown overwhelmingly positive results
8 for the United States and for individual states.

9 We have often said, and we strongly
10 believe that the FTAA holds similar benefits for the
11 United States. And so we put our money where our
12 mouth is. We broke our budget, and with the generous
13 support of a number of our members, commissioned the
14 study of the projected economic impact of a free trade
15 area of the Americas on the United States.

16 Working with a trade partnership the
17 council produced FTAA Blueprint for Prosperity. This
18 one; I've also brought examples of earlier product in
19 support of the NAFTA and then sort of complementing
20 the NAFTA imports in America, the rest of the story.

21 This Blueprint for Prosperity is a report
22 that maps the current trends in U.S. trade with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 Western Hemisphere, incorporates an update of the
2 council's heralded NAFTA Delivers for America reports,
3 and projects the impact of the elimination of tariffs
4 and other barriers to trade on the United States.

5 The economic projections were performed on
6 national, state-by-state, and sector-by-sector bases.

7 First of all, the report shows that trade
8 with the Western Hemisphere is already important to
9 the U.S. economy. Western Hemisphere trade accounts
10 for 44 percent of total U.S. exports, more than with
11 any other part of the world.

12 Total trade with the FTAA countries was
13 \$784 billion in 2000, and this trade has been growing
14 about 11 percent a year on average, again, more than
15 any other part of the world.

16 To put this in perspective, FTAA trade
17 surpasses U.S. trade with the European Union or with
18 the Asian Pacific Rim countries combined, and as our
19 studies note, quote, the bulk of those exports is
20 manufactured goods, particularly high value machinery
21 and equipment. Chemicals and related products and
22 steel and steel products are also important, unquote.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Services trade has also been significant.
2 Again, the United States had greater service for its
3 FTAA countries than it did to Europe as a whole, or to
4 Africa and the Middle East and Asia and the Pacific
5 combined. I probably don't need to point out that
6 those services exports involve neither pumping gas nor
7 flipping burgers.

8 A large part of Western Hemisphere trade,
9 of course, is accounted for by our active partners,
10 and the NAFTA record is a fitting indicator of the
11 likely benefits of the FTAA. In the first six years
12 of the NAFTA, U.S. trade with Canada and Mexico
13 increased by 124 percent, to \$656 billion comprising
14 one third of all U.S. trade.

15 Under NAFTA, a number of U.S. industrial
16 sectors have experienced export growth to Mexico and
17 Canada of over 100 percent. As of 2000, for example,
18 the petroleum refining sector has posted a whopping
19 221 percent gain.

20 The United States has benefitted from
21 foreign investment as well as export growth as a
22 result of NAFTA. In the first seven years of NAFTA,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Canadian investment in the United States increased by
2 144 percent to over \$126 billion. Mexican investment
3 in the U.S., although much smaller, also increased by
4 20 percent.

5 And I would be remiss if I failed to
6 mention the salutary effects of imports on
7 competitiveness, inflation, and standards of living in
8 the United States. This is the subject of an earlier
9 council report, "Imports on America: the Rest of the
10 Story," which I displayed for you a few moments ago,
11 and this was produced in cooperation with the National
12 Retail Federation.

13 Even without the benefit of a free trade
14 area, in 2000 U.S. exports to non-NAFTA FTAA countries
15 exceeded U.S. exports to Japan and were four times
16 greater than exports to China. With the FTAA, the
17 council study shows that the United States could enjoy
18 further NAFTA-like benefits, increasing national
19 income by \$6.3 billion annually with full
20 implementation.

21 These gains result, in part, from
22 projected export gains in such areas as nonelectric

1 machinery and equipment, motor vehicles and parts,
2 wearing apparel and primary food production.

3 In a regional breakdown, our study
4 demonstrates that the FTAA would result in income
5 gains for every region of the United States ranging
6 from 1.2 billion each in the northeast and west to 1.7
7 billion in the midwest and topped by a 2.2 billion
8 gain in the south.

9 These gains are the outgrowth of more
10 efficient allocation of resources and lower prices to
11 consumers, resulting from the elimination of trade and
12 investment barriers.

13 While our report shows substantial and
14 across-the-board gains for the United States from the
15 FTAA, we believe that no study can complete capture
16 the full gains from open trade. Trade is a dynamic
17 factor in economic growth that generates hope,
18 opportunity, and ultimately higher living standards
19 for the U.S. and its neighbors.

20 Hemispheric trade liberalization through
21 the FTAA also goes hand in hand with a broad array of
22 health, education, labor, environmental, and other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 initiatives that make up the Summit of the Americas'
2 agenda.

3 The FTAA is the central economic component
4 of that agenda, and it can be the driver for a wide
5 range of social, governmental, and economic
6 improvements throughout the Western Hemisphere.

7 However, trade is not a panacea for the
8 world's ills, and the success of the FTAA will depend
9 in large part on the success of the broader Summit of
10 the Americas' agenda.

11 The Council of the Americas has been there
12 since 1965. We will be there in the year 2005 and
13 beyond, working to secure the benefits of the FTAA and
14 the Summit of the Americas' agenda for the United
15 States and all its democratic neighbors and partners
16 in the hemisphere.

17 Thank you very much for giving me this
18 opportunity to share the council's views. I look
19 forward to working with you to make the FTAA a
20 reality.

21 CHAIRPERSON SURO-BREDIE: Thank you very
22 much, Ambassador Frechette.

1 I will ask the first question, and then I
2 will turn to Dan Leahy of the ITC.

3 I wonder if you could tell us a little bit
4 -- and we'll look forward to the document as part of
5 the record -- about the methodology of your study, how
6 you went about sort of putting it together and where
7 the sources are from.

8 AMBASSADOR FRECHETTE: This was done
9 before I arrived at the council. Can one of you tell
10 me more?

11 AMBASSADOR PRICE: Sure. The methodology
12 was basically we checked the statistics from a whole
13 wide variety, had an economic model. The report
14 itself gives a very detailed explanation of the
15 methodology we went through. We hired people that
16 really are very respected.

17 CHAIRPERSON SURO-BREDIE: We'll submit a
18 copy of it for the record then.

19 Thank you.

20 MR. LEAHY: Ambassador, a pleasure to see
21 you.

22 AMBASSADOR FRECHETTE: Good to see you.

1 MR. LEAHY: As you know, the ITC also does
2 a fair amount of reporting on the impacts of trade
3 agreements. We've done extensive reporting already on
4 the FTAA and no doubt we'll do further reporting in
5 the future.

6 Your presentation talked about export
7 effects primarily in sectors that would benefit in the
8 U.S. from those exports. We often are asked to look
9 at the other side of the equation, the import effects.
10 Does your study also point out sectors where there's
11 likely to be substantial increases in imports in the
12 U.S. market?

13 AMBASSADOR FRECHETTE: We focus primarily
14 on the export effect on the United States.

15 MR. LEAHY: Are there sections also that
16 touch on the other?

17 AMBASSADOR FRECHETTE: I don't think so.
18 No, it does not.

19 MR. LEAHY: That was essentially my
20 question. I was just curious to see what you may have
21 come up with on that and how it may match up with the
22 work the ITC has been doing.

1 AMBASSADOR FRECHETTE: Sure.

2 MR. LEAHY: Thank you.

3 CHAIRPERSON SURO-BREDIE: Any other
4 questions?

5 MS. WHITE: I have a question about the
6 import effects, too, because it seems to me trade is
7 a two-way street. Sometimes goes up and something
8 might go down.

9 AMBASSADOR FRECHETTE: Sure, but you can
10 understand that one of the things that we're trying to
11 do is to get people in every state to focus on the
12 export effects of the FTAA. Historically that has
13 been one of the big struggles, as it was in the NAFTA.

14 I was around when we were talking to the
15 private sector about the NAFTA, and the export effect
16 was, of course, one of the key issues of interest I
17 remember at the time. That was the figure that the
18 governors of most states were really focused on, and
19 as I recall at the time, we had considerable support
20 from the governors from virtually every state in the
21 nation.

22 MS. BOWIE-WHITMAN: May I ask a question?

1 CHAIRPERSON SURO-BREDIE: Yes, of course.

2 MS. BOWIE-WHITMAN: Just as a follow-up
3 question to the others then, in your -- oh, Barbara
4 Bowie-Whitman from the Department of State.

5 As a follow-up question then, the
6 estimates that are done of these regional income gains
7 for the various regions of the country are based on
8 estimates that deal with increased exports rather than
9 some of the effects upon income that people might have
10 from consuming at lower prices.

11 AMBASSADOR FRECHETTE: Yes, they are based
12 primarily on that, but we're going to leave you copies
13 of these, and I hope that you will enjoy these.

14 CHAIRPERSON SURO-BREDIE: Any more
15 questions?

16 (No response.)

17 CHAIRPERSON SURO-BREDIE: No. If not,
18 thank you very much, Ambassador Frechette.

19 AMBASSADOR FRECHETTE: Thank you. It's
20 good to see you all. Nice to be here.

21 There's a ten-page explanation of that.

22 CHAIRPERSON SURO-BREDIE: Great. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you.

2 AMBASSADOR FRECHETTE: No, that's okay.
3 No, no. I was going to actually make a plea that on
4 the ATPA and other trade benefits of a unilateral
5 nature that will be expiring about the time that the
6 FTAA comes in, that there will be a seamless
7 communication between the two so that we don't see
8 some retrogression, but it was just an aside.

9 CHAIRPERSON SURO-BREDIE: We'll see that
10 the council helps us with that.

11 (Laughter.)

12 CHAIRPERSON SURO-BREDIE: Thank you.

13 Our next witness is Peter Mangione -- I
14 hope I'm pronouncing this correctly -- of the Footwear
15 Distributors and Retailers of America.

16 MR. MANGIONE: Good morning.

17 CHAIRPERSON SURO-BREDIE: Good morning.
18 Did I pronounce your name correctly?

19 MR. MANGIONE: I pronounce it Mangione in
20 Washington, but the rest of the world, it's Mangione.

21 CHAIRPERSON SURO-BREDIE: Well, we'll
22 pronounce it the way it's pronounced in Washington.

1 MR. MANGIONE: Right. Thank you.

2 I am Peter Mangione, President of Footwear
3 Distributors and Retailers of America.

4 FDRA's members account for about three
5 quarters of all footwear sold at retail in the U.S.
6 and for the vast bulk of imported footwear into the
7 U.S.

8 We're pleased to appear today to urge that
9 all duties on footwear imported into the U.S.
10 manufactured in countries covered by the FTAA be
11 eliminated entirely on day one of the implementation
12 of that agreement.

13 I make this recommendation for several
14 reasons. First, with import penetration in the
15 footwear sector at 97 percent based on 2001 data which
16 became available this week, our duties on footwear
17 have lost all relevance and have no commercial
18 significance.

19 This is so because the price of imported
20 footwear after application of MFN duties is vastly
21 cheaper than U.S. produced shoes. Indeed, the
22 differential between U.S. manufactured and imported

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 shoes ranges, after application of U.S. duties, from
2 between 60 percent lower to 40 percent lower,
3 depending on category.

4 This is the most important thing I've said
5 and will say today: that after application of the
6 duties, imports are 60 to 40 percent lower priced.

7 Clearly, U.S. producers long ago lost the
8 price battle with imports, and the price adjustment
9 mechanism, tariffs, are thus irrelevant and pointless.

10 Second, there is no connection between
11 continuance of tariffs and U.S. footwear manufacturing
12 and its jobs. The little remaining U.S. shoe
13 production only survives by differentiating itself on
14 bases other than price, such as brands, product
15 positioning, size and width strategies, and the like.

16 Indeed, in its most recent footwear
17 investigation involving shoe duties under NAFTA, the
18 ITC concluded, quote, domestically produced footwear
19 articles complete mostly on non-price factors, such as
20 brand names, product quality, and differentiation and
21 support services, end quote. We agree.

22 Elimination of duties will not affect

1 these strategies.

2 Third, shoe duties are a huge consumer
3 tax. In 2001, more than \$1.6 billion was paid to the
4 Treasury in shoe duties. This amounts to some 3.2
5 billion at retail applying normal mark-ups.

6 With only 19,000 U.S. shoe workers in the
7 low shoe duty area, synthetic and leather footwear,
8 this cost comes to some \$107,000 per job annually.
9 The job cost is higher in the high duty area, the
10 rubber footwear where there are some 2,600 U.S. shoe
11 manufacturing jobs. The cost there is approximately
12 \$430,000 per year per job.

13 Finally, it is clear that shoe
14 manufacturing in FTAA countries is small, with the
15 exception of Brazil, whose principal product, women's
16 leather footwear. About 95 percent of the exports
17 from Brazil are women's leather footwear, has long
18 vanished from U.S. production in any meaningful way.
19 There basically is no U.S. production of women's
20 leather footwear.

21 The ten percent MFN duty on leather
22 footwear, if zeroed in the FTAA, could help Brazilian

1 producers remain competitive with China's producers,
2 which dominate this sector.

3 I thank you for your attention.

4 CHAIRPERSON SURO-BREDIE: Thank you very
5 much, Mr. Mangione.

6 Bennett Harman from USTR will be asking
7 questions.

8 MR. HARMAN: Are you arguing that tariffs
9 have zero effect or that they are relatively marginal
10 compared to other factors?

11 MR. MANGIONE: Tariffs only adjust price,
12 and in the case of footwear, imports are so much lower
13 priced after application of duties that they are
14 irrelevant.

15 Now, if the difference were a few points,
16 five percent, ten percent, we could argue that the
17 tariff makes some difference. But when the difference
18 is 60 percent, it is so drastically lower priced that
19 the tariffs are irrelevant.

20 And, in fact, if price were the only
21 criteria, the only criteria for determining whether to
22 buy import or domestic, there would be no U.S.

1 production.

2 The fact of the matter is there are other
3 considerations, brand being most important. A company
4 that has its own brand that can control distribution
5 channels, marketing, has an opportunity to do what
6 they want. They can produce here; they can produce
7 abroad. It becomes a question of return on
8 investment.

9 But our position is crystal clear.
10 Tariffs don't matter in terms of competition. The
11 tariffs are too low. They're too low. They're just
12 not high even. Even the very high tariffs are not
13 high enough. Even in the very high tariff area,
14 imports can still enter the country 40 percent lower
15 after application of the tariffs.

16 MR. HARMAN: Also, let me ask you --

17 MS. WHITE: Can I follow up on that?

18 MR. HARMAN: Okay.

19 MS. WHITE: I'm Betsy White.

20 So if tariffs don't matter, then what is
21 your concern? Why should they be lower?

22 MR. MANGIONE: Have you looked at the

1 tariff schedule on footwear? Have you ever seen it?

2 MS. WHITE: Yes, I have.

3 MR. MANGIONE: It is the most complicated
4 tariff schedule there is. It is a nightmare. My
5 office is filled with thousands of rulings.

6 We want to eliminate all of the Mickey
7 Mouse activity in this sector. It inhibits design and
8 marketing. Every shoe imported in the United States
9 is done to the tariff, not because of the duty
10 necessarily, but because to meet the requirements of
11 the tariff.

12 The tariff was written over 75 years ago
13 in an entirely different environment where subtle
14 distinctions had dramatic effect on duty. The
15 subtlest distinction, I could bring before you two
16 shoes you could not tell the difference. They have no
17 commercial difference whatsoever. The duty on one
18 shoe would be 67 percent, and on the other it would be
19 six percent.

20 We don't need these complications in the
21 tariff. We want to eliminate this horrible nightmare
22 of a tariff.

1 We also would like to offer these products
2 to the consumer at the best price. We sell a lot more
3 product when we can price to the market and not have
4 to deal with government's intervention. And that's
5 why we want to get rid of the tariffs, and they are a
6 huge consumer cost.

7 In fact, I think they represent something
8 on the magnitude of ten percent of all tariffs in a
9 sector which has 97 percent important penetration. In
10 2001, they had 97 percent. This year it will probably
11 be 98 percent.

12 I'm sorry. Did that respond to your
13 question?

14 CHAIRPERSON SURO-BREDIE: I just wanted to
15 ask a follow-up question to that --

16 MR. MANGIONE: Yes, ma'am.

17 CHAIRPERSON SURO-BREDIE: -- question, Mr.
18 Mangione. If you had brought these two shoes in that
19 are totally identical, what does the tariff schedule
20 say about those shoes? What is the differentiation.

21 MR. MANGIONE: You're going to be sorry
22 you asked this question, but I'll try to answer.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON SURO-BREDIE: I'm never sorry.

2 MR. MANGIONE: I will try to answer it.

3 It deals with a subject called foxing and
4 foxing-like band, and this is a -- foxing is a term
5 well understood in the shoe business. It is a strip
6 of material which connects the sole and the upper. It
7 can be on a leather shoe. It can be on a synthetic
8 shoe. It can be on a rubber shoe.

9 If you think to the Converse All Star --
10 I'm sorry I didn't bring any samples this morning --
11 but if you think of the Converse All Star, it's that
12 strip of rubber that goes around the base. That's a
13 foxing.

14 We all know what it is. It's a well
15 defined footwear term. We can all identify a foxing.
16 But in its infinite wisdom in 1964, when the Ways and
17 Means Committee wrote the present tariff, they
18 inserted a phrase "foxing-like band." This is a band
19 that's not a foxing, but it's like a foxing.

20 And this has created untold and endless
21 amounts of dispute, litigation, rulings on what it
22 constitutes. What it has basically come down to is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the slightest overlap, the slightest overlap on an
2 outsole for synthetic and rubber footwear can
3 constitute a foxing, and this can change the duty from
4 67 or from six percent to 67 percent.

5 It's this feature, this foxing-like band,
6 which is not a shoe term; it has nothing to do with
7 the shoe industry. It was created by the Ways and
8 Means Committee, which frankly, I don't know what they
9 were thinking about, but it was so long ago, but this
10 is the criteria.

11 And government has grappled with this
12 concept for these last 35 years, and it has created a
13 nightmare, and it has also inhibited design. A moon
14 boot, for example, which was a wonderful product, had
15 a high sheen, and I remember. We don't sell them
16 anymore because the Customs Service decided that was
17 a foxing-like band.

18 So the duty is not six percent on a normal
19 synthetic boot. It's 67 or in this case 37 and a half
20 percent. We don't sell them anymore.

21 This is why we want to get rid of these
22 crazy rules and this crazy tariff. If it doesn't have

1 commercial significance -- this is what tariffs were
2 designed for, to equalize competition. If they no
3 longer have this capacity, chuck them because the
4 consumer is paying three and a half billion dollars a
5 year for this privilege.

6 Yes, ma'am.

7 CHAIRPERSON SURO-BREDIE: Sorry. Just to
8 follow up.

9 MR. MANGIONE: Sure.

10 CHAIRPERSON SURO-BREDIE: Then are you
11 saying that the effect of this in the case of your
12 moon boot, that the effect of the tariff did have an
13 effect on production?

14 MR. MANGIONE: We just no longer make moon
15 boots. We make all kinds of rubber boots. We just
16 don't put it with that shaft.

17 It was mostly, I think, because of science
18 fiction movies, and I mean, there was some interest in
19 this kind of look. Most shoes are designed for the
20 look, not the functionality. I mean, there are some
21 that are designed for functionality, but most are
22 designed for, you know, the emotional appeal that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 elicit. I mean, it's the reason women buy twice as
2 many shoes as men. I mean, there's an emotional
3 content to footwear. It's a fashion item.

4 We're not in the replacement business.
5 We're selling something on a magnitude of almost five
6 and a half pair per year per person. Certainly we
7 don't need five and a half pair per year to, quote,
8 cover our feet. It deals with other things.

9 So we still sell lots of rubber boots, but
10 they're just not moon boots. We had to take the shaft
11 out.

12 CHAIRPERSON SURO-BREDIE: Thank you.

13 MR. LEAHY: I have one question. I've
14 dealt enough with the entire schedule to not ask you
15 questions about the tire schedule. So what I will ask
16 we had testimony earlier this morning about the
17 domestic manufacturer making a decision to produce
18 here in the United States.

19 MR. MANGIONE: Yes.

20 MR. LEAHY: Based on your testimony, it
21 would be your view that that decision would be
22 completely free of any tariff implications. Otherwise

1 if the tariff was zero or 60 percent, it wouldn't make
2 any difference?

3 That's what I'm trying to get a feel for.
4 How does it factor?

5 MR. MANGIONE: What's the difference
6 between that producer and the 150 others who closed up
7 long ago? What's the difference? What's the
8 difference? I mean is this price is different?

9 My answer would be no because why didn't
10 he close up ten years ago, five years ago when 150
11 others closed up?

12 The answer is, and I'm not that familiar
13 with this particular company that was mentioned
14 earlier, but clearly they have survived on some basis
15 other than price, but you know, it's a question of
16 return on investment. Maybe they could continue to
17 survive in this mode, but they've decided they want to
18 take their investment and make a better return on it.

19 I remember vividly before you commission
20 about 20 years ago the President of Converse, who at
21 that time was making all of his shoes in Lumberton,
22 North Carolina, was asked by the chairman of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 commission, "Well, wouldn't your company make a lot
2 more money if you just made them in Korea and imported
3 them?"

4 And after he got red in the face, and he
5 had to answer, "Of course we would."

6 Well, this is a decision companies have to
7 make for themselves, how they want to deploy their
8 assets and what kind of return they want. Maybe you
9 could seek it out here with the right product
10 positioning. Maybe you can do better in Mexico. Good
11 luck. I don't know.

12 But these are decisions companies have to
13 make on their own, and our position is they make these
14 decisions with or without the tariffs. It's not the
15 tariffs that drive these decisions. That's our
16 position.

17 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
18 Mangione.

19 MR. MANGIONE: Okay. My pleasure. Thank
20 you.

21 CHAIRPERSON SURO-BREDIE: Our next witness
22 is Brook Baker of the Health GAP.

1 MR. BAKER: Good morning.

2 CHAIRPERSON SURO-BREDIE: Thank you.

3 MR. BAKER: For the record, my name is
4 Brook Baker. I'm a law professor at Northeastern
5 University in Boston, Massachusetts. I'm also a
6 member of Health GAP, which stands for Health Global
7 Access Project.

8 It's an activist group that seeks
9 affordable medicines for people living with HIV/AIDS
10 globally. At present over 40 million people are
11 living with HIV, over 28 million in Africa. The
12 second highest rate of incidence in the world is in
13 the Caribbean, and we're here to testify today
14 primarily about the intellectual property provisions
15 of the proposed FTAA and to request, indeed, demand
16 that the negotiating position of the U.S. change with
17 regard to intellectual property protections, given
18 significant advances in international understanding
19 about the risks that the current intellectual property
20 regime or an expanded regime would have to access to
21 medicines worldwide.

22 Although the controls of the FTA seem

1 limited to the Western Hemisphere, there are features
2 of the current negotiating position of the United
3 States which would reduce access to medicines
4 worldwide. I'd like to bring these matters to your
5 attention so that the negotiating position of the U.S.
6 will change in important ways.

7 As I'm sure all of you are aware, the
8 current gold standard for intellectual property rights
9 worldwide is reflected in the TRIPS agreement, Trade
10 Related Aspects of Intellectual Property Rights, one
11 of the foundational agreements entered into, becoming
12 effective in 1995. It came into existence at the same
13 time as the WTO itself.

14 That agreement was the result of carefully
15 calibrated concessions, negotiation positions,
16 compromises to try to have a balanced intellectual
17 property regime, which would have important
18 protections both for manufacturers and for industries
19 that deal in intellectual property, but also for
20 countries that need access to patented medicines for
21 other purposes, particularly in our mind in response
22 to public health crises.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 This past November, November 2001, there
2 was a further negotiation at the WTO trying to clarify
3 the interrelationship between the TRIPS agreement and
4 public health. An important clarification was that
5 all of the countries, member countries, at that time
6 agreed that public health was primary. In fact, in
7 Paragraph 4 of the agreement is, "We agree that the
8 TRIPS agreement does not and should not prevent
9 members from taking measures to protect public
10 health."

11 Further, it says, "We affirm that the
12 agreement can and should be interpreted and
13 implemented in a manner supportive of WTO members'
14 rights to protect public health and, in particular, to
15 promote access to medicines for all*."

16 to issue compulsory licenses ** deemed
17 right by that sovereign nation.

18 In addition, the right of countries to
19 comparison shop after a medicine had been placed in
20 the stream of commerce by a patent holder or its
21 affiliate, again, the country could comparison shop
22 and parallel import if necessary.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The U.S. * it gave its word. It gave its
2 word further that it would continue to negotiate this
3 year with respect to the plight of smaller and poorer
4 countries, particularly those that lack the industrial
5 capacity to produce at meaningful economies of scale
6 life saving medicines and would permit them to find a
7 source of manufacturer outside their own boundaries.

8 In other words, the TRIPS provisions would
9 be read so that a country could produce export life
10 saving medicines to a country that lacked capacity to
11 produce those medicines on its own.

12 The FTAA provisions on intellectual
13 property were substantially drafted well in advance of
14 the TRIPS clarification at Doha and reflect all goals
15 of the U.S. with respect to intellectual property in
16 light of public health.

17 If those goals continue to be pursued,
18 then it is breaking its promise. It's breaking its
19 promise to countries in Central and South America, and
20 particularly the Caribbean, which has, as I said, the
21 second highest rate of HIV in the world, and it breaks
22 its promise to Africa where there are 28 to 30 million

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 people living with HIV, where two and a half million
2 people will die this year.

3 The most obvious way in which the
4 agreement breaks that promise is a provision in draft
5 text which says that it would be unlawful for any
6 country in the agreement to produce medicines for
7 export to any other country under a compulsory
8 license. That is, if Brazil were to issue a
9 compulsory license on grounds that were deemed
10 permissible, it could not produce one pill for export
11 to another country under the current draft text.

12 In addition, the current text of the
13 agreement seeks to exclude compulsory licenses for
14 anything except noncommercial governmental use,
15 national emergencies, or to remedy anti-competitive
16 practices.

17 These are perfectly valid terms upon which
18 compulsory licenses might be granted, but the promise
19 of Doha was that compulsory licenses could be granted
20 on any terms deemed by the sovereign to be sufficient
21 and particularly that they were appropriate in the
22 context of public health.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 So in essence, through a subsequent and
2 perhaps back door negotiation with the FTAA, the
3 United States would be undoing the promises that it
4 entered at Doha.

5 There are other provisions in the draft
6 text which are problematic with respect to access to
7 medicines at affordable prices for people living under
8 a threat of death from HIV/AIDS. It seeks to and
9 gives countries permission to extend patent terms
10 beyond 20 years, again, rising prices.

11 It seeks to link the registration of
12 medicines with the medicine's patent status, and it
13 seeks to prevent the use of drug registration data on
14 commercial confidentiality terms for five years,
15 therefore preventing the use of registration data in
16 clinical studies, for example, to prevent the
17 registration of medicine even if that medicine is
18 being produced under compulsory license.

19 In essence, if the government found itself
20 in an emergency, it would still not necessarily have
21 access to comparing its current product against the
22 preexisting product and satisfying the registration

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 authority.

2 We hope that the continued draft text is
3 merely an oversight on the part of the negotiators,
4 that is, that having made solemn promises at Doha,
5 that they've not gone back to the text in the FTAA,
6 reviewed it under the new standards that insure access
7 to medicines, and insured countries' rights to protect
8 public health, and that there's simply some work to be
9 done by negotiators to change that text.

10 I'd like to emphasize that there are other
11 entities, the WTO and WHO, in particular, that have
12 stated on a recent report that they interpret the Doha
13 agreement to mean that countries should relinquish
14 their rights to try to impose higher intellectual
15 property standards on other countries, particularly
16 countries that are attempting to address legitimate
17 public health needs.

18 Health GAP is here today to assert that it
19 would be unconscionable for the U.S. to go back on the
20 promises made at Doha; that it should no longer seek
21 maximum protection of intellectual property right for
22 pharmaceutical companies; that lives hang in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 balance; that promises have been made; and that those
2 promises should be kept.

3 Thank you very much.

4 CHAIRPERSON SURO-BREDIE: Thank you very
5 much, Professor Baker.

6 We'll turn to Kira Alvarez of USTR for our
7 first questions.

8 MS. ALVAREZ: Thank you, Professor. Thank
9 you for your comments. They were very interesting,
10 and we appreciate all of the input that we get on
11 these issues.

12 I want to ask a question concerning the
13 issues with respect to patent term extension and
14 linkage and data protection.

15 MR. BAKER: Yes.

16 MS. ALVAREZ: And particularly my question
17 is how does your proposal sort of square with current
18 U.S. law in this field.

19 MR. BAKER: Well, our position squares
20 with U.S. law in this field in this sense. The U.S.
21 can continue to have extra IP protections if it wants
22 to, as can Europe, as will most of the rich markets of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the world.

2 Presumably rich markets will continue to
3 protect IP and the profits of funds of companies will
4 be maintained. In poorer countries, in developing
5 countries, in Central and South America and in the
6 rest of the world, but in this case in the Western
7 Hemisphere, they would have some freedom to only adopt
8 TRIPS compliance standards, and those standards at
9 present do not require linkage between data
10 registration and -- excuse me -- between patent and
11 license -- excuse me -- drug registration. They do
12 not necessarily require patent extensions. They do
13 not necessarily require a five year protection of
14 clinical trial data.

15 So the countries could simply go to the
16 WTO standard rather than the TRIPS plus standard.

17 CHAIRPERSON SURO-BREDIE: Questions?

18 MR. BAKER: We have a revised statement
19 I'd like to leave.

20 CHAIRPERSON SURO-BREDIE: Thank you.

21 MR. BAKER: Thank you.

22 CHAIRPERSON SURO-BREDIE: Thank you very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 much.

2 Our next witness is John Meakem, Manager,
3 International Trade, National Electrical Manufacturers
4 Association.

5 MR. MEAKEM: Good morning.

6 CHAIRPERSON SURO-BREDIE: Good morning,
7 Mr. Meakem.

8 MR. MEAKEM: I guess I'm one removed from
9 standing between you and lunch. So --

10 CHAIRPERSON SURO-BREDIE: Please don't let
11 that stop you from testifying.

12 MR. MEAKEM: Very good.

13 Thank you for this opportunity to provide
14 the following brief comments on the elimination of
15 tariff and non-tariff barriers to trading goods and
16 services through the free trade area of the Americas
17 agreement or negotiations.

18 NEMA, the National Electrical
19 Manufacturers Association, is the largest trade
20 association representing the interests of U.S.
21 electric industry manufacturers. Our more than 400
22 member companies manufacture products used in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 generation, transmission, distribution, control, and
2 use of electricity.

3 NEMA members, the majority of whom are
4 small to medium sized enterprises, very much want to
5 increase their international sales. Many already do
6 significant amounts of business in Europe and Canada,
7 and they see Latin America's markets as a significant
8 area for growth.

9 To help them expand in this direction,
10 NEMA is currently benefitting from a market
11 development cooperator program with the Department of
12 Commerce in support of our offices in Sao Palo and
13 Mexico City.

14 NEMA strongly supports establishment of a
15 free trade area of the Americas. We have actively
16 participated in previous Americas Business Forums, and
17 we very much want to see the FTA or an FTA achieve
18 NEMA priorities, such as tariff elimination.

19 One of our fundamental goals is the
20 worldwide elimination of tariffs on electrical,
21 electronic, and medical imaging equipment in our
22 product scope. We support achievement of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 objective through, in addition to the FTAA, WTO, zero
2 tariff elimination, regional agreements, indeed, such
3 as the FTAA, and bilateral free trade agreements,
4 including the U.S.-Chile agreement.

5 We've seen in the case of tariffs that a
6 most prominent example is Mexico where since NAFTA our
7 exports to Mexico have boomed, and we would very much
8 welcome the chance to repeat that throughout the
9 Americas.

10 And in FTAA we would also like to see
11 endorsement of openness and transparency in government
12 procurement, endorsement that there should be no
13 governmental mutual recognition agreements for non-
14 federally regulated products. We'd like to see
15 endorsement of energy services, liberalization,
16 protection of intellectual property rights,
17 endorsement of WTO technical barriers to trade
18 provisions.

19 We would like to see an inclusive
20 definition of international standards, endorsement of
21 voluntary market driven standards, as well as
22 voluntary market driven conforming assessment, and as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 many other market opening measures as possible.

2 We hope that there will, of course, be
3 effective monitoring and enforcement mechanisms, and
4 we hope that the legitimate free trade benefits of the
5 FTAA would not be encumbered by, would not be blocked
6 or hindered by -- we would like to see as few labor
7 and environmental provisions as possible that would be
8 serving to block or hinder legitimate free trade.

9 Thank you.

10 CHAIRPERSON SURO-BREDIE: Thank you very
11 much.

12 Bennett Harman will ask questions for the
13 panel.

14 MR. HARMAN: Could you elaborate a little
15 bit on the areas in the field of technical barriers to
16 trade where you think it might be useful for the FTAA
17 to build on, clarify, go beyond what already exists in
18 the WTO TBT agreement?

19 MR. MEAKEM: Well, in many ways, Bennett,
20 I think in a sense it's a little bit of a defensive
21 action. We're hoping that FTA negotiations will
22 result in anything that will tamper with what's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 already on the books, and through our offices in Sao
2 Palo and Mexico City, we are working to make sure that
3 the practice lives up to the principles.

4 And we are hoping that the eventual FTAA
5 will fall in line and endorse what's already on the
6 books.

7 In terms of should there be any further
8 advances on the WTO TBT, that's something which in a
9 sense is a valid topic, but in many ways I'm looking
10 to make sure that what's being negotiated now doesn't
11 play around with what's already out there, and in
12 terms of the draft that was made public last year with
13 all of the many proposals, we look forward to working
14 with you to work through them all and make sure
15 there's nothing there that really tampers with what's
16 already out on the books.

17 MR. HARMAN: By way of follow-up, do I
18 interpret that some effort might be directed towards
19 making sure that there is effective implementation in
20 the region of the WTO TBT agreement, that there's more
21 work to be done in that at a minimum?

22 MR. MEAKEM: I think that's something

1 we'll always be pursuing around the world.

2 MR. SMITH: I'm Russell Smith. I'm with
3 USTR.

4 Unfortunately our government procurement
5 negotiators are down negotiating or perhaps it's
6 fortunate that they're actually working on the
7 negotiation of this agreement, but one question that
8 came to their mind was that your testimony on
9 government procurement issues reflects an emphasis on
10 transparency.

11 Is it NEMA's view that focusing on
12 transparency is preferable to focusing on the
13 establishment of a rules based system, looking at the
14 market access components as well?

15 I mean is it just transparency that we
16 need or do we need more in the government procurement
17 area?

18 MR. MEAKEM: Well, I apologize if the way
19 we worded things diminished the value that we place on
20 having a rules based system. Clearly the two go hand
21 in hand.

22 CHAIRPERSON SURO-BREDIE: Thank you very

1 much, Mr. Meakem.

2 MR. MEAKEM: I have a revised version.

3 CHAIRPERSON SURO-BREDIE: Thank you very
4 much.

5 MR. MEAKEM: Thank you.

6 CHAIRPERSON SURO-BREDIE: We have been
7 told that Jean Hooloran, who was to testify, will not
8 be testifying and, therefore, this hearing is
9 adjourned until 1:45 in the same room.

10 Thank you.

11 (Whereupon, at 2:07 p.m., the hearing was
12 recessed for lunch, to reconvene at 1:45 p.m., the
13 same day.)

14

15

16

17

18

19

20

21

22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 (1:50 p.m.)

3 CHAIRPERSON SURO-BREDIE: This hearing
4 will come to order.

5 The first witness is Ellen Shaffer,
6 Director of the Center for Policy Analysis on Trade
7 and Health.

8 Dr. Shaffer.

9 DR. SHAFFER: Thank you for the microphone
10 and thank you for pure tap, unbottled water at the
11 table. I appreciate that.

12 And I will have some updated comments or
13 at least corrected comments.

14 Thank you for the opportunity to speak
15 with you today. I'm with the Center for Policy
16 Analysis on Trade and Health. We're a nonprofit
17 organization dedicated to improving population health
18 and expanding access to public health and vital human
19 services through research, policy analysis, and
20 advocacy.

21 We'd like to present a number of concerns
22 with a draft agreement from the perspective of public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 health. I'd like to make a few summary comments and
2 then talk about some of the justifications that are
3 offered for expanding privatization and deregulation
4 of health services and water, in particular, and of
5 course, I'd love to hear your comments.

6 Defining vital human services, such as
7 health care in water is tradable commodities, is
8 relatively new and in conflict with an array of
9 international accords that construe access to health
10 care and water a basic public health and rights
11 issues, as well as being essential to sustainable
12 economic development.

13 The draft FTA agreement would facilitate
14 further privatization and deregulation of vital human
15 services, including health care and water. It
16 proposes new powers for trade tribunals to override
17 public health protections if they conflict with the
18 interests of private corporations and thereby
19 undermines the ability of public bodies to safeguard
20 population health.

21 These provisions approach a range of
22 public protections as barriers to trade, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 therefore warrant elimination. From a public health
2 perspective, the evidence suggests that the reverse
3 may be the case, that further privatization and
4 deregulation presents a barrier to population health
5 and requires greater scrutiny.

6 We, therefore, recommend the effects. The
7 effects, of course, vary greatly between countries and
8 within countries, given the vast disparities of wealth
9 among and between nations. Just looking at the infant
10 mortality rates in the U.S., which are seven per
11 1,000, and then in metropolitan Peru, which are in the
12 range of 17 per 1,000, and then in rural Peru which
13 are 84 per 1,000 live births.

14 Clearly, there are tremendous disparities
15 that need to be taken account of and remedied.

16 Our recommendation is to exclude vital
17 human services, such as water and health care, from
18 the FTA negotiations.

19 A couple of additional points. There are
20 clearly many pressing international health issues
21 facing the world, and national and international
22 bodies are only beginning to figure out how to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 coordinate and grapple with effective methods for
2 dealing with these critical health care threats.

3 The National Academy of Sciences and
4 others have enumerated what some of these are. I
5 heard this morning there is an outbreak of malaria in
6 the Washington, D.C. area, certainly an issue that's
7 endemic in much of the developing world, as is
8 cholera, both preventable by clean water and
9 sanitation methods.

10 Tuberculosis and AIDS, emerging drug
11 resistant diseases, and of course, biohazards.

12 We don't yet have a common international
13 language to measure and discuss health status, health
14 care systems, trade in health services, or the effects
15 of these on economic and personal well-being. It's
16 not clear how the FTA or related WTO panels will
17 define important terms related to public health, such
18 as necessary, burdensome, and services.

19 In this context, imposing trade
20 disciplines in the area of vital human services, such
21 as health care and water, is misguided and likely to
22 deter real solutions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Some of the justifications that are
2 offered for extending privatization and deregulation
3 and imposing trade disciplines include the issue that
4 trade improves economic wealth and, therefore, health.

5 Certainly economic growth and wealth are
6 important underpinnings of population health and well-
7 being. Under the currently rules, however, global
8 trade has not improved economic growth or increased
9 wealth for most people in Latin America.

10 Secondly, protecting population health
11 requires adequate funding for public health systems
12 and universal coverage for individual medical care.
13 Deregulation and privatization of health care have
14 weakened public systems and accountability.

15 Again, there are new preventable and fatal
16 illnesses, such as Dengue, hemorrhagic fever, which
17 are emerging in the Americas, which require careful
18 attention, not necessarily addressed by trade
19 disciplines.

20 I'm just going to go through three other
21 discussions. One is the trade and health care
22 presents economic opportunities for developing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 countries. In fact, the net impact of globalization
2 on population health will depend not necessarily just
3 on economic activity, but the ability of each country
4 to manage trade, including its regulatory environment.

5 And this point was emphasized on the joint
6 WHO-WTO report that came out after you August 28th
7 first deadline, but that really emphasized the
8 importance of stable regulatory environments in order
9 for population health to benefit from economic
10 activity.

11 And in the case both of niche markets and
12 migration of health care personnel, that point is well
13 made.

14 Another argument is that private health
15 insurance can reduce public expenditures for health,
16 making health care systems more efficient. Again,
17 without going into detail, which you'll find in my
18 testimony, there's been pretty extensive experience
19 with private insurance in Latin America, and the
20 result has been increases in user fees and further
21 growths in inequality and access to health care and a
22 diminution of health status.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Finally, there's the discussion that
2 privatization of water can expand access to water in
3 developing countries and control costs in developing
4 countries, such as the U.S. Multi-disciplinary fact-
5 finding missions and in-depth case studies have
6 concluded that privatization and deregulation of water
7 generally result in harm to population health,
8 increase costs, and decrease access to water and
9 increase water related diseases, again, such as
10 cholera and diarrheal diseases.

11 Privatization does not resolve crises
12 associated with access to water.

13 In conclusion, we'd like to just reiterate
14 two things: first of all, that we believe vital human
15 services such as health care and water should be
16 excluded from these negotiations. Certainly there's
17 room for international cooperation, including health
18 services and health professional organizations, in
19 resolving these important issues about trade
20 disciplines. Imposing trade disciplines on a time
21 line of FTAA doesn't seem to be the way to proceed.

22 And I guess, secondly, we just want to ask

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that since testimony is now being submitted
2 electronically, that the Joint Staff and the USTR
3 would consider making testimony publicly available on
4 the Net.

5 Thank you.

6 CHAIRPERSON SURO-BREDIE: We're trying.

7 DR. SHAFFER: Good. Thank you.

8 CHAIRPERSON SURO-BREDIE: Thank you very
9 much for your testimony, Dr. Shaffer.

10 Kimberly Claman, USTR, would like to ask
11 a question, and then other members of our panel,
12 including, I think, Barbara -- that's right. That's
13 the place to be.

14 DR. SHAFFER: And you're with USTR as
15 well?

16 MS. McLEOD: No, the Environmental
17 Protection Agency.

18 DR. SHAFFER: Thank you.

19 MS. CLAMAN: Thank you.

20 You raised the concern that the FTA could
21 result in deregulation of services. However, the text
22 does not so provide, and in fact, anticipates that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 governments will need to regulate many services.

2 I was wondering if you could just clarify.

3 DR. SHAFFER: Sure. Well, it's, of
4 course, not very well stated in Chapter 7. There are
5 other chapters of the agreement that would tend to
6 lead towards regulation. The ability of trade
7 tribunals to question whether a regulation is
8 necessary, whether it's as burdensome, whether it's
9 more burdensome than necessary, taking those decisions
10 out of the hands of public health authorities and
11 allowing private corporations or corporations through
12 their governments the ability to challenge the use of
13 beef hormones, the use of MTBEs.

14 The experience that we've had both through
15 NAFTA and through other trade agreements suggest that
16 there can be direct monetary effects that can be
17 leveled against governments, corporations for enacting
18 and enforcing public health regulations. But there
19 can also be a chilling effect.

20 So I think that's the connection with
21 deregulation, and certainly -- well, you asked that
22 question about privatization. So sure.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON SURO-BREDIE: Barbara.

2 MS. McLEOD: Thank you for your
3 testimony.

4 So people would say that instead of
5 excluding water services from the trade agreement, a
6 better way resolve the problem is to focus on capacity
7 building for regulatory systems that would allow the
8 countries to address in a direct way the concerns of
9 access to water and price.

10 How do you respond to that?

11 DR. SHAFFER: Absolutely

12 MS. McLEOD: Instead of excluding water
13 services.

14 DR. SHAFFER: Well, I guess the question,
15 you know, and maybe you can help me understand your
16 perspective on that, but certainly I guess it's not
17 clear to me how including water in the FTAA
18 contributes to capacity building.

19 Certainly I think that capacity building
20 and improving the regulatory environment, as well as
21 direct funding for water projects, as well as debt
22 cancellation for countries that need to pursue these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 objectives, are very important.

2 It so far as not been clear how these
3 kinds of trade disciplines, whether through structural
4 adjustment programs or through trade agreements
5 contribute to capacity building, but certainly it's a
6 discussion to have.

7 I'm happy to be informed and educated.

8 MS. McLEOD: Thank you.

9 MR. LEAHY: Well, Dr. Shaffer, thank you
10 for your testimony.

11 I just had a request actually. You
12 mentioned in your testimony a World Health
13 Organization study that had been done after the
14 deadline and also some studies on privatizing water
15 services. Could you submit some of those for the
16 record or have you already done that?

17 DR. SHAFFER: I have not, and I would be
18 pleased to. Absolutely. I thought I included the Web
19 site here. I see I haven't, but, sure, I'd be glad to
20 do that.

21 MR. LEAHY: Thanks.

22 DR. SHAFFER: Sure.

1 CHAIRPERSON SURO-BREDIE: I'm sorry.

2 Could you do that for us electronically?

3 DR. SHAFFER: Yes. You'll let me know
4 where.

5 CHAIRPERSON SURO-BREDIE: Right. It
6 should be sent to gblue@ustr.gov.

7 DR. SHAFFER: I'm in touch with Ms. Blue,
8 and I'd be happy to.

9 CHAIRPERSON SURO-BREDIE: Thank you.

10 DR. SHAFFER: Yeah, sure.

11 CHAIRPERSON SURO-BREDIE: We'll send it to
12 the members of the panel and the negotiators.

13 DR. SHAFFER: Good.

14 CHAIRPERSON SURO-BREDIE: If there are no
15 further questions, thank you very much.

16 Our next witness is Mr. Steve Beckman,
17 from the United Automotive, Aerospace, and
18 Agricultural Implement Workers of America.

19 Mr. Beckman, before you testify, I think
20 if the panel could identify themselves it will help
21 the transcriber. I'm sorry. We should have done this
22 to start.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Shall we start with you, Barbara?

2 MS. McLEOD: Sure. Barbara McLeod with
3 the Environmental Protection Agency.

4 MR. CLATANOFF: Bud Clatanoff with USTR.

5 MS. HESTER: Janie Hester with the
6 Department of Labor.

7 MS. MALITO: Andrea Malito with the
8 Commerce Department.

9 MS. BROWN: Karen Brown with the State
10 Department.

11 CHAIRPERSON SURO-BREDIE: Carmen Suro-
12 Bredie, USTR.

13 MS. CLAMAN: Kimberly Claman, USTR.

14 MR. LEAHY: Dan Leahy, USITC.

15 MR. KARAWA: Omar Karawa, USTR.

16 MR. FRITZ: Jonathan Fritz, USTR.

17 CHAIRPERSON SURO-BREDIE: Thank you very
18 much.

19 Mr. Beckman, the floor is yours.

20 MR. BECKMAN: Thank you. Thank you for
21 the opportunity to appear before the TPSC.

22 The UAW has provided advice on the FTAA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 talks to the administration directly through submitted
2 statements, including this one, and through three
3 submissions to the committee of government
4 representatives on the participation of civil society.

5 Despite this apparent interest in the
6 views of the UAW and others representing workers and
7 other citizens, the agenda and drafts of the FTAA, as
8 well as the U.S. government proposals, remain mired in
9 a failed model of economic integration and approach to
10 trade police.

11 The UAW statement raised several issues in
12 the areas of market access and investment that are
13 being discussed in the FTAA negotiations. We oppose
14 the development of any proposal that would result in
15 the elimination of U.S. tariffs on motor vehicles and
16 parts until a thorough analysis of auto trade and
17 investment in the region has been undertaken and
18 analyzed.

19 You may recall that analyses of the impact
20 of NAFTA on U.S.-Mexico auto trade by different
21 researchers produced different projections for
22 improvement in the U.S. trade balance in motor

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 vehicles and in automotive parts.

2 In fact, NAFTA has produced a large
3 increase in U.S. deficits with Mexico in both vehicles
4 and parts. Clearly, a new approach to analyzing the
5 impact of regional integration in the auto industry is
6 needed.

7 We urge the TPSC to keep in mind that the
8 companies in the auto industry, assemblers and parts
9 producers, are multi-national. Their economic and
10 financial interests cover the whole region, and their
11 assessments of the impact of alternative trading
12 regimes are based on their corporate interests, not on
13 the interests of American workers, American
14 production, American value added, or American skills
15 and technology enhancement.

16 If you're truly concerned with the overall
17 U.S. economic interest, you will develop auto related
18 proposals that rely on our perspective.

19 We also believe that a review of the
20 language on safeguards is essential. The NAFTA
21 language is simply not adequate. I'm sure that
22 discussions about safeguards received a surge of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 energy from the Section 201 steel decision. So it
2 should be possible for the U.S. government to not only
3 defend its action on steel, but also to examine new
4 approaches to truly effective action on behalf of
5 workers and industries injured by regional trade.

6 In our statement we've made numerous
7 points regarding the investment negotiations, but I'd
8 like to emphasize one in particular. The corporations
9 that push for including investment rules in trade
10 agreements have vehemently opposed the imposition of
11 requirements on their operations by governments. They
12 argue that governments should not skew marketplace
13 competition.

14 However, these same companies are equally
15 vehement in their opposition to restrictions on the
16 involvement of governments in market distorting
17 practices that involve offering huge financial
18 advantages to one company at the expense of all
19 others, including the expenditure of hundreds of
20 millions of dollars for land and its development, for
21 worker training, for tax holidays, and for a variety
22 of other cost reducing benefits.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The hypocrisy of the corporations on the
2 issue of government intervention in the market is
3 nothing less than staggering.

4 The UAW understands that governments have
5 an interest in how economic development takes place
6 and in the need to support some kinds of corporate
7 behavior and discourage others. But the use of
8 fantastic sums of money to entice firms to produce in
9 one location over another must be controlled. In most
10 instances, taxpayers are the losers in the bidding
11 wars for investment. The economic benefits often fail
12 to reach promised levels.

13 Corporations which would make the
14 investments anyway and in many cases do not even need
15 subsidies to make their investments profitable are the
16 winners. Shameful give-aways of taxes paid by working
17 people to corporations with billions of dollars in the
18 bank must be addressed.

19 Finally, I must state as the UAW has in
20 every statement made about the FTAA or any other trade
21 negotiations that the inclusion of worker rights
22 protections in the core of the agreement enforced in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the same manner as other provisions incorporating the
2 core labor standards defined by conventions of the
3 international labor organization is an absolute
4 necessity in order to promote equitable, sustainable
5 development in any process of regional economic
6 integration.

7 The conditions of work are imbedded in
8 products and services trade between countries in the
9 region.

10 Failing to meet internationally recognized
11 standards for worker rights contributes to a downward
12 spiral for workers' incomes and working conditions
13 that undermines development rather than stimulating
14 it.

15 The goal of the FTAA process is to improve
16 living standards and promote prosperity in the region.
17 This cannot be achieved unless the fundamental rights
18 of workers are assured. The absence of any activity
19 on workers' rights in the FTAA negotiating groups
20 demonstrates the contempt of the FTAA process for the
21 interest of workers and helps to explain the popular
22 opposition that the FTAA faces in the region,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 including in the United States.

2 We share that opposition with our
3 colleagues in the labor movement across the hemisphere
4 and with organizations of citizens concerned with the
5 environment and sustainable development, with farmers,
6 human rights activists, and millions of others.

7 We appreciate the opportunity to present
8 the UAW's testimony to the TPSC, and I look forward to
9 hearing your questions and comment.

10 Thank you.

11 CHAIRPERSON SURO-BREDIE: Thank you very
12 much, Mr. Beckman.

13 The first question will be posed by Bud
14 Clatanoff of USTR.

15 MR. CLATANOFF: Steve, I note, and of
16 course, we're very much aware of your request for
17 enforceable worker rights provisions within the FTAA.
18 That is something that has been the U.S. government
19 position and will continue to be the U.S. government
20 position in the FTAA negotiations.

21 I want to ask you a question thought.
22 It's something that was in your written testimony

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 which you gave us, and I want to quote it here.

2 "The balance between corporate rights and
3 responsibilities has swung overwhelmingly in the
4 direction of rights, and it is time to demand far
5 greater responsibilities."

6 How do you fashion clauses in trade
7 agreements, such as the FTAA, that would strengthen,
8 encourage, if not require, this greater corporate
9 responsibilities that you talk about?

10 MR. BECKMAN: I think there are a variety
11 of areas in which responsibilities on corporations can
12 be incorporated. One of course, is respect for worker
13 rights, and we've been very strongly supportive of
14 emphasizing that in all trade agreements.

15 There are a variety of regulatory issues,
16 some of which were just discussed, where the
17 regulatory powers of governments have been undermined
18 in the areas of public safety and health through
19 provisions providing investor rights in trade
20 agreements and the structure of the investment
21 provisions in NAFTA, in particular, provide a very
22 strong set of rights for corporations, including the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ability to go directly to dispute settlement with the
2 government which in the United States American
3 citizens do not have.

4 We have a court system to address
5 concerns. People have to go through that court system
6 in order to address their problems with the government
7 policy. Foreign investors don't have to do that.

8 So there are balances in the investment
9 provisions themselves in the agreement and recognition
10 of areas of government responsibility that should not
11 be covered by trade agreements.

12 So excluding elements of public policy
13 from trade agreements is another way of encouraging
14 governments to take responsibility for establishing
15 criteria for corporate behavior that meet public
16 support.

17 I mean, those are some of the examples.
18 I mean, in our view the whole starting point of a
19 discussion of regional economic integration would be
20 from a different point of view than the specific
21 negotiating groups that have been established in the
22 FTAA process and would recognize other broader

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 objectives as essential elements of the negotiations
2 and of regional integration.

3 So we would support a much longer, broader
4 set of discussions that addressed a whole set of
5 issues related to the imposition of investment
6 requirements on companies that want to invest. I
7 mean, I think that should apply to domestic investors
8 as well as foreign investors.

9 A discussion of what does comprise
10 adequate social responsibility on the part of
11 corporations and participants in the economy, and I
12 think there's a very large discussion that needs to
13 take place, as has been pointed out in other
14 testimony.

15 The publication of the draft of the FTAA
16 language provided some basis for people to discuss
17 that, but it's still a very limited segment of the
18 population of the region that is engaged in this
19 process, and increasingly when people find out about
20 different pieces, they are surprised and shocked at
21 what areas of their public life are all of a sudden
22 subject to some international discussion and potential

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 rules.

2 The areas in which international
3 agreements need to take precedence and government
4 policy needs to take precedence, those are fundamental
5 discussions that need to take place before you go
6 about establishing a single set of rules that
7 governments commit themselves to abiding by.

8 MR. CLATANOFF: Thank you.

9 MS. HESTER: Thank you for your testimony,
10 Steve.

11 Based on your testimony, you foresee
12 largely increased in imports as a result of the FTAA.
13 However, can you foresee any possibility of export
14 increases as well in terms of motor vehicles and parts
15 from the U.S. into the FTAA countries?

16 MR. BECKMAN: What we said when NAFTA was
17 being negotiated was, yes, there will be some
18 increases in exports, but the increase in imports will
19 be far greater than the increase in exports, and
20 that's exactly what's happened.

21 And we would see the same situation taking
22 place in the context of an FTAA that looks similar to

1 the NAFTA agreement. I mean, there were particular
2 structural elements of the negotiations in NAFTA, such
3 as the very rapid elimination of the 25 percent tariff
4 on light trucks that was particularly offensive and
5 has had significant, very significant trade effects.

6 I mean, those kind of specific things can
7 be altered in some respect, but our experience is that
8 the United States market is the focus of investments
9 in the region. It has been the focus of investments
10 in Mexico, would become more of a focus for
11 investments in the hemisphere, and that for a variety
12 of reasons, including a history of local content
13 requirements and a variety of other restrictions that
14 promote local producers in many of the significant
15 auto producing countries in the region, that they have
16 built up a significant local base of production that
17 would then be directed at exports to the United States
18 market.

19 They already supply the local market.
20 There is not any burning need for, you know, new
21 sources of parts production for increased growth in
22 production in Brazil and Argentina and Venezuela and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Colombia. U.S. companies are there; Japanese
2 companies are there; European companies are there.

3 The U.S. assemblers in the region are not
4 looking for exports in the United States to supply
5 that market, whereas our experience is that the United
6 States is a huge importer of parts and vehicles, and
7 that a significant portion of production in the region
8 could easily be redirected at the U.S. market.

9 MS. HESTER: I had one other question
10 concerning your proposal for review of auto trade in
11 the region. Do you or your organization plan to
12 submit anything along these lines to us that we'd be
13 able to look at?

14 MR. BECKMAN: Well, it's traditionally
15 been our view that it's the job of the experts in the
16 government to develop these kinds of analyses. There
17 are lots of staff people in the various agencies of
18 the government that have some expertise in the
19 industry and have the responsibility to produce
20 analyses that evaluate the potential impact of trade
21 agreements on the U.S. economy.

22 I have been advising U.S. trade

1 negotiators for more than 20 years, and a significant
2 amount of my time has been spent educating those
3 negotiators about the difference between the interest
4 of multinational U.S. companies and American workers
5 and American producers.

6 And unfortunately, a lot of the review
7 that comes out of U.S. government analyses is based on
8 the perspective of multinational companies rather than
9 domestic interests that are concerned about the impact
10 of what takes place on the U.S. economy rather than on
11 the bottom line of companies that have operations all
12 over the world.

13 So we will certainly be providing analyses
14 of what we think would take place under particular
15 regimes, trade regimes, that are proposed in the
16 course of negotiations, and we do that on a regular
17 basis.

18 But in terms of providing, you know, one
19 of those fancy bound 300 page studies using a
20 particular model for evaluating the analyses, I
21 wouldn't expect that. But there are people who do
22 such studies, academics and consulting groups. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 evaluate those studies when they are done. We will
2 continue to do so.

3 And we certainly would ask that the
4 government negotiators consult us about any studies
5 that are not public that we would not be able to
6 otherwise have access to analyze.

7 MS. CLAMAN: Thank you, Mr. Beckman.

8 Your testimony indicates that investment
9 rules should not prevent governments from establishing
10 policies for employment technology and other purposes.
11 Can you describe what kinds of employment and
12 technology programs should not be affected by
13 investment disciplines?

14 For example, is it government incentives
15 to attract technology or expand employment or
16 operations?

17 MR. BECKMAN: Well, I think what we would
18 like to see in these kinds of negotiations are fairly
19 broad discussions of the impact of those kinds of
20 guarantees or requirements of companies on trade
21 rather than outlawing them per se, as has been done in
22 part in the WTO and in NAFTA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 There are specific, you know, demands that
2 governments are not allowed to make. We think the
3 true test of whether those demands are appropriate or
4 not is a domestic political process, and then we can
5 argue about the impact of those decisions and how they
6 affect other trading partners.

7 If requiring a company that's going to
8 invest in Argentina anyway to hire Argentines to
9 provide certain kinds of research functions or to be
10 employed for certain technical skilled positions, I
11 mean, that's something that's unlikely to have a major
12 impact on U.S. economic activity or U.S. trade.

13 If that's the case, then fine, let them do
14 it. There shouldn't be any broad rule that says, "No,
15 this is a violation."

16 So our test would be the impact of such
17 actions, not proscriptions. So the kinds of issues
18 that we'd be concerned about cover all of those areas.
19 We're concerned when governments do that, and if it's
20 done with the intent of transferring investment from
21 one location, like the United States, to another,
22 that's obviously a problem for us, and we want to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 able to take action if that's the case.

2 But we think that the mere existence of
3 such activities on the part of government is not in
4 itself the problem. So those should be areas of
5 discussion, but not areas of immediate action and
6 proscription.

7 The companies are willing to do that if
8 they're given \$100 million to locate someplace. They
9 don't mind doing it as a quid pro quo. Where it
10 becomes a sort of game of blackmailing, you know,
11 we'll invest here; you know, we'll meet this
12 requirement if you give us X, Y, and Z, if you give us
13 training money, if you give us free land, if you give
14 us a 20-year tax holiday.

15 Well, those are not necessarily appropriate
16 areas for economic activity to be determined, you
17 know, not the criteria you want for economic activity
18 to be determined. It's okay if the companies don't
19 complain if the government gives the money, but if the
20 government doesn't give the money, the governments
21 can't do that. That seems to me just sort of a
22 hypocritical view of appropriate government policy and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 what role the government should play in their economic
2 situation.

3 CHAIRPERSON SURO-BREDIE: Mr. Leahy.

4 MR. LEAHY: Mr. Beckman, on the issue of
5 safeguard protections that you raised, if you haven't
6 already done so, could you perhaps provide us with
7 some specific ideas about how we could come up with a
8 more effective safeguard?

9 MR. BECKMAN: Well, one of the issues
10 that's most problematic is that the remedy under NAFTA
11 is restoration of the tariff. The United States has
12 very low tariffs. It really has no impact, and so it
13 doesn't accomplish the objective of remedying the
14 injury that's been sustained.

15 It's also problematic, as I mentioned in
16 the testimony, that very often the imports come from
17 the very same company that's displacing the American
18 workers, and so the remedy in that case is not
19 available. The company is not going to rehire those
20 workers. There are no circumstances under which a
21 border action would restore the investment in the
22 United States at the expense of the investment that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 been made abroad that's supplying those imports.

2 Those are company decisions, and I don't
3 have a specific answer to that. I do think that in
4 many cases with respect to NAFTA we need to limit the
5 purview of the regional trade agreement so that the
6 global safeguard provisions become more available.
7 That's one area where I think it's important to make
8 some changes.

9 But I think it's an important issue that
10 needs a lot more discussion internationally. It has
11 been a controversial issue obviously, and I think a
12 broader discussion, a longer discussion would be
13 advisable.

14 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
15 Beckman.

16 Our next witness is Mr. Jim Thomas,
17 President of ASTM International.

18 We've been joined by Bennett Harman, our
19 market access negotiator at USTR.

20 MR. THOMAS: It's good to see you,
21 Bennett. Thank you for joining us.

22 As you know, my name is Jim Thomas, and

1 I'm the President of ASTM International, which is one
2 of the largest standards developing organizations in
3 the world.

4 Since the subject of standards in trade
5 agreements is a complex one and cannot be fully
6 explored in the amount of time we'll have together,
7 I've asked permission of the panel to allow me to
8 attach two additional documents that are a written
9 statement.

10 One is a letter that was sent to
11 Ambassador Zoellick, signed by ten major U.S.
12 standards developing organizations with a combined
13 worldwide membership of over 300,000 scientists and
14 engineers. The letter supports what I will say here
15 today.

16 The second document is an exploration of
17 the WTO-TBT agreement and its relationship to the
18 standards development processes in the United States
19 as compared to others.

20 Well, let me concentrate my comments on
21 the views of ASTM at this session today. ASTM is an
22 organization in which representatives from 100

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 countries develop standards. Thousands of these
2 standards are global in scope and use. They are
3 developed according to principles set down by the
4 World Trade Organization. They appear in the national
5 portfolios and regulations of many countries around
6 the world. Their effect on trade is significant.
7 Their value to the U.S. economy and the economies of
8 many of the other FTAA countries is incalculable.

9 The simple message I have come to deliver
10 today is this. There is language in the FTAA draft
11 document still bracketed that effectively precludes
12 their use and use of standards like them, and that
13 language must be changed.

14 At present the draft agreement section on
15 market access and technical barriers to trade contains
16 a definition that would limit international standard
17 solutions and place some U.S. industry sectors at a
18 disadvantage. The language used to define an
19 international standardization body makes specific
20 reference to two European based private sector
21 voluntary standards organizations: the International
22 Organization for Standardization, ISO, and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 International Electrotechnical Commission, IEC,
2 pointedly excluding all others.

3 The definition with its references to the
4 ISO and IEC is a virtual recommendation. It is
5 certainly an endorsement, and it suggests that the
6 standards that issue from these two bodies are somehow
7 endowed with a presumption of conformity with the
8 terms of the agreement.

9 This is an erroneous assumption commonly
10 reached by the uninitiated and the unaffected. No
11 standards body comprised of national bodies which tend
12 to operate as political and economic blocks can insure
13 that the standards they issue will not act as barriers
14 to trade.

15 But more importantly, these references
16 taint the definition with bias and exclusivity.
17 Implicitly and by omission, this definition suggests
18 that thousands of technically advanced international
19 standards that are developed in U.S. based
20 organizations are either, one, not credible or, two,
21 present barriers to trade. Neither of these is true.

22 There are those among our trading partners

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 who adhere to the notion when it is to their advantage
2 that the development of voluntary international
3 standards is within the sole purview of these two
4 European based organizations. Because of the great
5 diversity that exists in the U.S., some industries are
6 able to apply these standards, access markets, and
7 remain competitive.

8 But there are many who cannot. For them
9 the appropriate standard may not exist there or it may
10 exist on a technical level that is not sufficiently
11 advanced.

12 The standard in question may even lend
13 itself to the interest and regulatory agenda of a
14 competitive economic region. Dynamic sectors, such as
15 the ones represented in ASTM and other U.S. based
16 standards organizations, must be able to seek
17 international standard solutions that do not thwart
18 their ability to trade.

19 The U.S. government is also entitled to
20 international standards that will suit their
21 regulatory needs, standards in which its interests are
22 represented. It should not have to choose between

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 quality and relevance in a trade agreement.

2 The position taken by the USTR within the
3 WTO Committee on Technical Barriers to Trade has been
4 that bodies which operate with open and transparent
5 procedures and that afford an opportunity for
6 consensus among all interested parties will result in
7 standards which are relevant on a global basis and
8 prevent unnecessary barriers to trade.

9 In other words, the position of the USTR
10 has been that the process of international
11 standardization and the relevance and fair trade
12 aspects of the resulting standards are related more to
13 principles than to the structure of the institutions
14 that produce them. And we agree with this
15 wholeheartedly.

16 These principles are articulated in the
17 second triennial review of the operation and
18 implementation of the WTO-TBT agreement and Annex IV
19 of that review. It is the view of ASTM International
20 that these principles go to the heart and spirit of
21 the TBT agreement and can be and should be applied to
22 any agreement that has as its aim the elimination of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 technical barriers to trade, in particular, the FTAA
2 agreement.

3 We also assert that the position
4 articulated in Annex IV is representative of the full
5 range of processes that support an advanced U.S.
6 trade.

7 To that end, we propose that the FTAA
8 draft language in brackets be replaced by the
9 following:

10 The parties recognize that international
11 standards, guides, or recommendations must have been
12 elaborated following the set of principles set forth
13 in the WTO Committee on Technical Barriers to Trade,
14 decisions and recommendations adopted by the committee
15 since 1 January 1995. That's a decision of the
16 Committee on Principles for the development of
17 international standards, guides, and recommendations
18 with relation to Articles II, V, and Annex III of the
19 agreement, which is contained in their Annex IV.

20 The acceptance of these principles in the
21 WTO-TBT committee was a significant step forward for
22 those who hold the view that there are multiple paths

1 to international trade.

2 ASTM supports the objectives of the WTO-
3 TBT agreement, abides by its principles, and will
4 support every effort to replace the bracketed FTAA
5 draft agreement language with language that is
6 inclusive of U.S. practices and trade interests.

7 I'd like to thank you for your time, your
8 consideration, and if you'd have any questions, I will
9 make an attempt to answer those questions.

10 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
11 Thomas.

12 We'll ask Bennett Harman to lead the
13 questioning.

14 MR. THOMAS: Brought the heavy hitter in
15 just for my questioning, huh?

16 CHAIRPERSON SURO-BREDIE: We didn't want
17 you to go away feeling --

18 MR. THOMAS: I didn't want to feel empty.

19 MR. HARMAN: Thank you, Mr. Thomas.

20 As you've indicated, we've wholly
21 internalized the concept that we should not accept an
22 inappropriately narrow definition of an international

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 standards organization. Your suggestion is for a
2 cross-reference to the WTO work that's already been
3 done to embrace that principle.

4 I guess my question is: beyond that, is
5 there anything else that you would propose that we
6 seek in the area of standards and technical barriers
7 to trade that would be a TBT plus or WTO-TBT plus?

8 MR. THOMAS: I think that right now what
9 we're looking to do is to move away from the practice
10 of listing of organizations, which tends to give
11 preference and actually precludes utilization of
12 standards that meet all the conditions, but do not
13 have the appropriate acronym associated with it.

14 We think moving in the direction of having
15 the general principles apply and to maintain some
16 continuity among all the various negotiations that are
17 going on between various regions or very direct
18 negotiations between the U.S. and other individuals
19 countries, that the more we can try to stay within
20 these fundamental principles, the better off we're
21 going to be in the long term.

22 MR. HARMAN: Thank you.

1 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
2 Thomas.

3 MR. THOMAS: Thank you very much for your
4 time. I appreciate it.

5 CHAIRPERSON SURO-BREDIE: Our next witness
6 is Andrew Wechsler, who will be speaking on behalf of
7 the government of the U.S. Virgin Islands, the Virgin
8 Island rum industry and the government of the
9 Commonwealth of Puerto Rico.

10 I understand that Mr. Wechsler will be
11 introduced by Peter Hiebert.

12 MR. HIEBERT: Ladies and gentlemen,
13 members of the Trade Police Staff Committee, my name
14 is Peter Hiebert, and I'm a partner in the law firm of
15 Winston & Strawn.

16 Winston & Strawn serves as outside counsel
17 to the governments of the United States' Virgin
18 Islands and also to the Commonwealth of Puerto Rico.

19 Mr. Wechsler is not able to be here this
20 afternoon, and I will be introducing his colleague,
21 Andrew Szamosszegi of LECG.

22 But before introducing Andrew, who will

1 provide a summary of the probable economic effects
2 analysis conducted by LECG, a further tariff
3 liberalization of the rum industry under the proposed
4 FTAA, I would like to provide a brief overview of the
5 critical importance of this industry to the economic
6 and fiscal foundations of the governments of the
7 Virgin Islands and Puerto Rico.

8 Under longstanding principles governing
9 the tax relationship between the United States and
10 these island jurisdictions, the U.S. has returned back
11 to the respective treasuries the federal excise taxes
12 collected on Virgin Islands and Puerto Rican rum.

13 In the case of the Virgin Islands, this
14 amounts to some \$75 million a year, or approximately
15 15 percent of the government's total budget.

16 In the case of Puerto Rico, rum taxes
17 exceed one third of a billion dollars a year.

18 Any trade decision that might impair these
19 revenues thus could have disastrous consequences for
20 both island jurisdictions. This is especially so in
21 the case of the Virgin Islands, which securitizes its
22 outstanding debt with these rum tax revenues and which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 finances its essential public infrastructure with rum
2 tax bonds.

3 In addition, the government of the Virgin
4 Islands has just negotiated a series of agreements
5 with the U.S. Department of Justice and with the U.S.
6 Environmental Protection Agency under which the
7 construction of new waste water treatment facilities
8 and future compliance with the Clean Water Act are
9 tied to future rum tax revenues.

10 In consideration of the unique role that
11 rum plays in the economies of the Virgin Islands and
12 Puerto Rico, as well as the other island economies in
13 the Caribbean under the CBI, the U.S. government in
14 1997 negotiated a Solomonian framework for the
15 treatment of rum in the Singapore zero for zero
16 agreement on distilled spirits.

17 Under that accord reached by the U.S., the
18 European Union, Canada, and Japan, duties on high
19 valued branded rum would be removed, while maintaining
20 tariff treatment of low valued commodity rum, which is
21 highly price and import sensitive.

22 I note for the record that Congress has

1 just reaffirmed this policy in its reauthorization of
2 the Andean Trade Preferences Act, approved this past
3 summer, by voting to exclude low valued rum from
4 further tariff liberalization. I respectfully submit
5 that this should remain the policy of the United
6 States in negotiating the FTAA.

7 And I would be pleased to answer any
8 questions after Mr. Szamosszegi has finished his
9 presentation.

10 Thank you.

11 MR. SZAMOSSZEGI: Thanks, Peter.

12 Good afternoon. This testimony has been
13 prepared by Andrew Wechsler and me, Andrew
14 Szamosszegi. Mr. Wechsler is the Managing Director of
15 International Trade Practices at LECG, LLC, and a
16 professional economist with more than 20 years'
17 experience in the public and private sectors.

18 I am a managing consultant at LECG.

19 Drew and I have been asked to examine the
20 probable economic effect extending duty free status to
21 low valued rum under the free trade area of the
22 Americas initiative. On the basis of applying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 objective economic analysis to the statutory criteria,
2 this testimony concludes that it would be inadvisable
3 to extend duty free status to low valued rum as part
4 of the FTAA.

5 In 1992, Mr. Wechsler examined the
6 probable economic effects of extending duty free
7 status of low valued rum to Mexico as part of the
8 NAFTA. That study reached the following conclusions.

9 One, rum production was important to the
10 economies of the U.S. Virgin Islands and Puerto Rico.

11 Two, the existing duties on imported rum
12 were critical cost advantages for insular rum
13 producers, especially in the production of low valued
14 rum.

15 Three, the removal of the duties would
16 erase the current competitive advantage of the U.S.
17 Virgin Islands and Puerto Rican producers in supplying
18 the U.S. rum market.

19 In 2001, we were asked to revisit the
20 question of the probable economic effect of expanding
21 duty free status on rum imports to Latin American
22 countries as part of the FTAA and/or removing the rum

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 exclusion from the Andean Trade Preferences Act.

2 Applying updated data, we found that
3 producers, such as Brazil, Colombia, have the capacity
4 and resources to respond to such a fundamental change
5 in their relative cost positions. Removing the
6 existing duty would transform them from high cost to
7 low cost suppliers of low valued rum to the U.S.
8 market.

9 What follows is the rationale for our
10 conclusions. Rum is an alcoholic distillate from the
11 fermented juice of sugar cane, sugar cane molasses or
12 other sugar cane byproducts. It is a major product of
13 the insular economies in the Caribbean Basin
14 initiative countries and historically have been the
15 major supplies to the U.S. market.

16 Puerto Rico and the U.S. Virgin Islands
17 accounted for almost 89 percent of U.S. apparent
18 supply in 2000.

19 The overall rum market is segmented into
20 low valued, commodity-like rum, and high valued,
21 branded rum. The highest valued rum is shipped in
22 bottles, has strong brand identity, and is not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 extremely sensitive to change in prices.

2 There are daunting barriers to entry at
3 the high end of the market, such as substantial
4 advertising expenditures necessary to establish brand
5 identity. Low valued rum is shipped in bulk in
6 bottles. It is a price sensitive commodity item whose
7 country of origin is not very important to the
8 consumer.

9 Firms that produce low valued rum cannot
10 easily match the expenditure levels necessary to enter
11 the more lucrative market segments.

12 The cost of producing rum depends on
13 whether the rum is bulk or bottled and aged or unaged.
14 Unaged bulk rum is the least costly to produce. Its
15 two key inputs are molasses and fuel oil. The
16 bottling of rum requires additional labor, bottles,
17 and packaging material.

18 The production of aged rum requires
19 storage facilities for aging the rum in barrels.
20 Inventory financing costs are also incurred.

21 Producers in the U.S. Virgin Islands and
22 Puerto Rico are faced with many cost disadvantages

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 compared to producers in Latin America, and because of
2 this, the current duty structure is critical to the
3 competitiveness of the insular rum producers.

4 The U.S. Virgin Islands rum industry has
5 one major player, VIRIL, which concentrates on the
6 lowest value commodity segment of the market. Its
7 shipments to the United States are almost entirely in
8 bulk.

9 With current duties on low valued rum, the
10 U.S. Virgin Islands is currently the low cost supplier
11 to the U.S. market. Compared to producers from South
12 America, VIRIL has many cost disadvantages, such as
13 high energy and labor costs, and it has no domestic
14 sugar industry to provide cheaper molasses.

15 Unlike Brazil and Colombia, all fuel oil
16 must be imported, putting VIRIL at a distinct cost
17 disadvantage. Data from the international labor
18 organizations suggest that wages in the U.S. Virgin
19 Islands are two to three times higher than wages in
20 Brazil and Colombia.

21 The U.S. Virgin Island industry is
22 extremely vulnerable to a surge in bulk rum imports to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the United States. More than 90 percent of its bulk
2 shipments to the United States are of low valued rum.
3 VIRIL has little mitigating factors on which to fall
4 back. Its higher valued products are still under
5 development.

6 Moreover, there are already well
7 established participants within the high valued
8 segments. So entry will be difficult.

9 The Puerto Rican industry has four major
10 players: Serralles, Edmundo Fernandez, Bacardi and
11 Trigo. Puerto Rican producers sell into the bulk and
12 bottled segments of the U.S. market, but they are most
13 active in the bulk and low valued bottle segments.

14 The latter also benefits from a 90 cent
15 per proof gallon tariff on U.S. imports from non-CBI
16 and non-NAFTA countries.

17 Puerto Rico is currently the dominant
18 player in the overall rum market here, accounting for
19 72 percent of bulk and 88 percent of bottled shipments
20 to the mainland market. Yet it is also vulnerable
21 because it operates in the lower price end of the
22 spectrum, imports molasses, and pays relatively high

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 wages and energy costs compared to rum producing
2 countries in South America.

3 Like their counterparts in the U.S. Virgin
4 Islands, Puerto Rican distillers pay wages that are
5 significantly higher than the wages paid by their
6 competitors in South America.

7 The U.S. government has in the past
8 recognized the sensitivity of the insular rum industry
9 to imports. Rum was excluded from the list of
10 products that received duty free treatment through the
11 generalized system of preferences program and the
12 Andean Trade Preferences Act.

13 As part of the NAFTA, it was decided to
14 phase out tariffs on Mexican rum over ten years. Most
15 recently, the United States and Europe agreed to zero
16 for zero tariff reductions on high valued rum, but
17 agreed to keep duties on low valued imports unchanged.

18 The impact of duty elimination on the U.S.
19 Virgin Islands and Puerto Rican rum industries depend
20 on the production costs of potential competitors and
21 their ability to meet U.S. demand. If the production
22 costs of these potential competitors are sufficiently

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 low, the removal of a tariff could transform them from
2 high cost to low cost producers in the U.S. market.

3 Both Colombia and Brazil possess the
4 capacity to take full advantage of duty elimination.
5 Brazil is the world's largest producer of cane
6 spirits, accounting for 73 percent of global
7 consumption in 1999.

8 Suchacca (phonetic), a product very
9 similar to rum, is the national drink of Brazil.
10 Colombia is the world's eighth largest consumer of
11 rum, and La Guardiente (phonetic) is a signature
12 alcoholic beverage and is also a cane based spirit.

13 Both countries have favorable cost
14 structures relative to the Virgin Islands and Puerto
15 Rico. Brazil and Colombia producers pay less for
16 labor, raw materials, and energy. Not only do they
17 produce their own molasses. They are net exporters of
18 the product.

19 Producers in these countries reportedly
20 also use the begas from sugar cane production as
21 replacement for fuel oil in the production process.

22 Moreover, currency depreciation of recent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 times has magnified these cost advantages. Duties are
2 currently the largest single cost factor for any
3 potential exporter to the United States. As shown in
4 the attached figures, absent the duty, Colombia and
5 Brazil could undercut U.S. Virgin Islands and, thus,
6 Puerto Rican rum in the U.S. market for low valued
7 bulk rum and could become extremely competitive with
8 Puerto Rico and the low valued bottled segment of the
9 market.

10 The existing duty on low valued rum is the
11 only factor preventing Brazil and Colombia from
12 becoming the low cost producers for U.S. rum.

13 Note that even under the current regime
14 Venezuela, Colombia, and Peru exported bulk rum to the
15 United States in the first half of 2002, while Brazil,
16 Colombia and Venezuela exported bottled rum.

17 CHAIRPERSON SURO-BREDIE: I'm sorry. You
18 are out of time now. So if you could just summarize.

19 MR. SZAMOSSZEGI: Sure, sure.

20 CHAIRPERSON SURO-BREDIE: In one sentence.

21 MR. SZAMOSSZEGI: Rum production has been
22 an extremely important part of the heritage of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 U.S. Virgin Islands and Puerto Rican rum industry, and
2 reducing or eliminating the tariff on rum at this time
3 would be a location tipping event which would probably
4 result in severe harm to the U.S. Virgin Islands rum
5 industry and to the Puerto Rican rum industry as well.

6 Thank you.

7 CHAIRPERSON SURO-BREDIE: Thank you very
8 much, Mr. Szamosszegi.

9 MR. SZAMOSSZEGI: Szamosszegi.

10 CHAIRPERSON SURO-BREDIE: Szamosszegi.

11 We will now turn to question by the panel.
12 Bennett Harman.

13 MR. HARMAN: Can I just start with one
14 question?

15 You indicated I believe it was in the
16 Virgin Islands that there's the beginning of a
17 transition towards the more high value added
18 production, and you indicated it's not an easy path to
19 follow, but that work has begun.

20 Does that hold out some promise for both
21 industries in the long run as a potential strategy to
22 survive in a highly competitive area?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SZAMOSSZEGI: Really based on the cost
2 factors, it's just about the only strategy. The only
3 problem is it costs a tremendous amount of money not
4 only to develop the product, but to market the
5 product.

6 I mean, Bacardi rum has lots of money that
7 it can throw around. If you compare the amount of
8 advertising of somebody like VIRIL with the amount of
9 advertising by Bacardi, you cannot even put them on
10 the same map or in the same graph.

11 So I think that it's their only strategy
12 for survival, but whether they can muster the
13 resources to do it is another matter entirely.

14 MR. HIEBERT: I would also add from the
15 government's point of view, the industry might
16 survive, but it would survive at a much smaller
17 version of its current self, and in the government's
18 point of view we would use the excise tax revenues.

19 Over the last five or ten years, the
20 industry has made a major push towards establishing
21 name brand identity, but notwithstanding that, 85
22 percent of what is produced in the Virgin Islands is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 still low valued bulk rum, which depends entirely on
2 the current tariff levels, 85 percent of total excise
3 tax revenues.

4 CHAIRPERSON SURO-BREDIE: Do you have an
5 additional question? The Department of Commerce,
6 Andrea Malito.

7 MS. MALITO: Thank you for your testimony.

8 I was wondering if you might be able to
9 comment as well on the state of modernization or
10 efficiency of the rum industry, the production in
11 Puerto Rico and the Virgin Islands as they might
12 compare to some of the other countries that you
13 referenced in your testimony.

14 MR. SZAMOSSZEGI: Well, we have not
15 visited, performed any plant visits. All that we've
16 been able to do is estimate the various costs
17 comparing them to other producers in Brazil and
18 Colombia.

19 We had some access to proprietary data
20 from the Virgin Islands and from Puerto Rico, and that
21 was the basis of our decision.

22 In terms of modernization, in Puerto Rico,

1 I think you have very modern production processes. In
2 the Virgin Islands, since the product is bulk rum, the
3 production processes, as far as we can tell, reflect
4 the ultimate output just like they do in other
5 countries.

6 But I think the key thing to keep in mind
7 is if you compare plants of similar technological
8 sophistication across countries and including the
9 insular economies. You will find that that's not the
10 main cost factor, especially in the low valued bulk
11 segment of the market, and that what is extremely
12 important here are their relative costs.

13 And the fact that the Virgin Islands is
14 able to be the leading supplier to the U.S. market,
15 despite having facilities that are equal in
16 technological sophistication to other rum producing
17 countries, I think that's a strong sign that the
18 current duty regime is the current cost advantage
19 that's keeping production there as opposed to
20 somewhere else.

21 CHAIRPERSON SURO-BREDIE: Thank you.
22 Thank you very much.

1 Our -- will we retain you as our next
2 witness then?

3 MR. HIEBERT: Actually I've had my say.

4 CHAIRPERSON SURO-BREDIE: Okay. And you
5 will be introduced by Ramon Cantero-Frau, the
6 Secretary of Commerce and Economic Development. The
7 testimony is on behalf of the Commonwealth of Puerto
8 Rico.

9 Welcome.

10 MR. CANTERO-FRAU: Ladies and gentlemen,
11 members of the Trade Policy Staff Committee, my name
12 is Ramon Cantero-Frau, and I'm Secretary of Commerce
13 and Economic Development for the Commonwealth of
14 Puerto Rico.

15 On behalf of the Governor, Sila M.
16 Calderon, I'm pleased to have this opportunity to
17 present the views of the government of Puerto Rico on
18 the negotiation of the free trade area of the
19 Americas.

20 As an island, Puerto Rico is dependent
21 upon trade for our continued prosperity. We are the
22 fifth largest trade in the Western Hemisphere, with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 over \$75 billion in exports and imports, including \$54
2 billion with the U.S. mainland. Because we see great
3 opportunities for companies operating in Puerto Rico,
4 if we are able to expand our trade with other
5 countries in the Americas, we applaud the President's
6 efforts to make this agreement a reality.

7 While Puerto Rico does believe in the
8 principles of free trade, we also believe in the
9 requirements for fair trade. And while we recognize
10 that different products will be treated differently in
11 any trade agreement, we ask that Puerto Rico's
12 interests be fully considered by the TPSC in
13 negotiating the FTAA, particularly with respect to the
14 import-sensitive sectors of rum and canned tuna.

15 I make this request because it is often
16 easy to overlook the fact that policies intended to
17 benefit the mainland economy may sometimes have
18 unintended and disparate consequences for an island
19 economy of four million U.S. citizens 1,000 miles away
20 from the U.S. mainland.

21 In developing the negotiating position of
22 the U.S. government, it is important to remember that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Puerto Rico is part of the United States and, through
2 our factories, as well as our four million consumers,
3 the Puerto Rican economy supports thousands of U.S.
4 jobs on the mainland.

5 Indeed, Puerto Rico is the eighth largest
6 trading partner of the U.S., of the United States, and
7 the 13th largest market for U.S. products. But as an
8 insular economy subject to U.S. minimum wage,
9 environmental and regulatory laws, as well as high
10 shipping costs, we must compete with low wage and low
11 cost countries in Central America and South America
12 that also have superior advantages in natural
13 resources that we lack.

14 In these circumstances, current tariff
15 treatment is often the difference between economic
16 viability and industrial relocation. Indeed, it is
17 essential to note that in the last six years, Puerto
18 Rico has lost over 26,000 manufacturing jobs,
19 proportionally more than any other U.S. jurisdiction,
20 to low wage countries around the world.

21 In particular, I ask you to take into
22 consideration the decisions of the U.S. Congress in

1 reauthorizing the Andean Trade Preferences Act this
2 past summer with respect to the tariff treatment of
3 rum and canned tuna. Recognizing the critical
4 importance of the rum industry to the Puerto Rican
5 economy, Congress reaffirmed the longstanding U.S.
6 policy by voting to exclude low valued rum for tariff
7 preferences under the Andean bill, while continuing
8 trade liberalization in the higher valued segments of
9 the rum market not dependent on price sensitivity.

10 Similarly, Congress recognized, based on
11 a study by the U.S. International Trade Commission,
12 that tariff liberalization in the canned tuna sector
13 would quickly lead to the demise of the U.S. canned
14 tuna industry in Puerto Rico, California and American
15 Samoa.

16 Accordingly, Congress wisely decided to
17 maintain existing tariff treatment of canned tuna in
18 the Andean bill, while permitting duty free treatment
19 of pouched tuna which is a separate and distinct
20 product and not directly competitive with canned
21 tuna.

22 Congress reached these decisions after

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 careful deliberation and consideration. The
2 government of the Commonwealth of Puerto Rico
3 respectfully requests that the TPSC carefully weigh
4 these judgments, and the evidence on which Congress
5 relied in making them, as it helps to develop the U.S.
6 negotiating positions in these sectors.

7 And now I would like to introduce Andrew
8 Szamosszegi of LECG, who will recount in more detail
9 the probable economic effects of further tariff
10 liberalization with respect to canned tuna under the
11 FRAA.

12 I would be pleased to answer any questions
13 after his presentation.

14 Thank you very much.

15 CHAIRPERSON SURO-BREDIE: Thank you very
16 much.

17 We're ready for your testimony, but I
18 think it will have to be largely abridged, if you
19 could help us with that.

20 MR. SZAMOSSZEGI: Okay.

21 CHAIRPERSON SURO-BREDIE: Thank you.

22 MR. SZAMOSSZEGI: Sure. Good afternoon.

1 As you know, we've been asked to examine the probable
2 economic effects of extending duty free status to
3 canned tuna as part of the FTAA.

4 Our study of the tuna industry proceeded
5 along the same lines as our study of the rum industry.
6 We found that the canned tuna industry is vital to the
7 American Samoan economy and also important to Puerto
8 Rico and California.

9 We found the existing duties on imported
10 and canned tuna provide critical cost advantages for
11 domestic canneries, and that under the current tariff
12 regime, Ecuador, Colombia, and Peru are already
13 increasing activity, especially Ecuador. And we found
14 that the removal of duties would increase the current
15 competitive edge to the U.S. insular economies in
16 supplying the U.S. canned tuna market and provide
17 decisive benefits for foreign competitors.

18 The product market, as you know, is
19 dominated by three companies. Starkist, Bumblebee,
20 and Chicken of the Sea together have about 80 percent
21 of the market. There's a small share that is taken by
22 private label brands.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The U.S. tuna industry is concentrated in
2 the insular economies of the American Samoa, Puerto
3 Rico, and California, which is formerly the tuna
4 cannery capital of the world. It is now home to just
5 scaled down canneries.

6 We see that employment is extremely
7 important to American Samoa. The tuna industry
8 employs 5,000 Samoans, maybe a little more, about
9 1,000 in total in the United States, I mean, in
10 California and in Puerto Rico.

11 The Puerto Rican canning industry has been
12 suffering for the past decade with a lot of closures.
13 In 2001, Starkist shut a plant in Mayaguez, which was
14 a major cannot center in the western coast of Puerto
15 Rico. This cost Puerto Rico about 1,300 jobs of
16 direct employment.

17 Puerto Rico has many disadvantages
18 compared to potential competitors in South America.
19 They include high wages of \$6.50 an hour in comparison
20 with \$3.75 in American Samoa, which is one of the
21 reasons American Samoa is so competitive, but
22 especially the wage differentials with South American

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 countries are huge. Wages in Ecuador and Colombia and
2 the other major potential cannery countries are about
3 77 cents to a dollar. So there's a huge, huge wage
4 disparity there.

5 Puerto Rico also has a disadvantage in
6 cost because they must have extra transportation
7 costs, and so that's also a significant disadvantage.

8 Traditionally the Congress has been
9 sensitive to the plight of the insular canning
10 industry. They adopted a 15-year phase-in for the
11 elimination of tariffs on Mexican tuna. Canned tuna
12 is not among the products that received duty free
13 treatment under the GSP, and note canned tuna is among
14 the 1,800 products that receive duty free treatment if
15 imported by the least developed GSP countries. None
16 of these countries is a significant tuna producer.

17 The high mobility of tuna production is
18 testament to the cost sensitivity of the tuna canning
19 industry. Countries that lost competitiveness in the
20 past due to rising wages, market entry by low wage
21 countries and tariff changes have quickly lost market
22 share and production facilities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 One only has to look at the impact of the
2 EU's version of the APPA which provides duty free
3 status to canned tuna. This resulted in large market
4 share gains for APPA nations at the expense of the
5 European processing sector and producers in Southeast
6 Asia.

7 Ecuador and Colombia are the only South
8 American countries to have exported tuna to the United
9 States in recent years, but Colombia's industry has
10 not shipped canned tuna to the United States since
11 1999. Ecuador has received substantial foreign direct
12 investment and other assistance in growing its tuna
13 industry and has benefitted greatly from the tariff
14 regime that's currently in place.

15 They also have access to the Eastern
16 United States which is one of the main advantages of
17 Puerto Rico.

18 CHAIRPERSON SURO-BREDIE: If you could,
19 sum up.

20 MR. SZAMOSSZEGI: Sure. Canned tuna
21 produced in American Samoa and Puerto Rico is
22 competitive in the U.S. market owing to this current

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 tariff regime. This regime has also enabled the
2 Ecuadorian industry to prosper. If you look at the
3 trade data for the past year, Ecuador has moved up to
4 the number two position as a source of imports, and it
5 is already doing very well.

6 In the final analysis, if we look at the
7 jobs gained and the jobs lost by removing duty free
8 status, we already see from the ITC report that
9 Ecuador would gain about 1,000 jobs, and the U.S.
10 could potentially lose two thirds of its jobs.

11 So I think it's clear that duty removal as
12 part of the FTAA would be a location tipping event in
13 tuna just as it was with rum.

14 Thank you.

15 CHAIRPERSON SURO-BREDIE: Dan Leahy will
16 ask questions for the panel.

17 MR. LEAHY: Thank you, gentlemen.

18 As you noted in your testimony, the
19 commission did, in fact, get involved in this issue in
20 the TPA legislation. We did do a number of different
21 analyses as part of that.

22 If I take your testimony correctly, the

1 solution that was come up with in the legislation for
2 dealing with Ecuador has essentially done its job. It
3 has taken care of what were perceived as issues for
4 Ecuador, but it hasn't really affected the canned tuna
5 market. Is that accurate?

6 MR. CANTERO-FRAU: Let me. When Starkist
7 closed the plant in Mayaguez, Puerto Rico last year,
8 I went to see the President of Heintz that was in the
9 decision to the director. What Congress has done is
10 basically has excluded the poached tuna, and basically
11 poached is a highly labor intensive process, and for
12 this person to manufacture that in Puerto Rico, the
13 cost per man per hour without counting all other fair
14 regulations, shipping costs, nor anything, our benefit
15 was something like \$8.56 per man per hour.

16 In Ecuador, the same process was \$1.50 per
17 man per hour with major benefit. So as you can see
18 there, what Congress has done basically is maintain
19 that professional tuna for poached tuna that we cannot
20 compete and then maintain the import restriction, the
21 tariff for the canned tuna.

22 Canned tuna, right now we're surviving in

1 Puerto Rico because certain tax grants that the
2 government has given the tuna canned factory, and the
3 reason that already you have about 1,500 more jobs
4 dependent upon that industry.

5 So if you take the imports out with the
6 structure that we have in Puerto Rico, we have to kiss
7 goodbye to the 1,500 jobs that we have on the tuna
8 canned industry because we cannot compete, and the
9 same case will happen with American Samoa.

10 American Samoa was \$3.50 per man per hour.
11 It will not be able to compete.

12 MR. LEAHY: Thank you.

13 MR. HIEBERT: Peter Hiebert.

14 I would like to just elaborate on that
15 answer, too. After the Andean legislation was
16 approved by the Congress and signed by the President,
17 Bumblebee, which owns and operates the remaining
18 facility in Puerto Rico indicated that they would stay
19 in Puerto Rico, and of course, they were on the fence
20 up until the final compromise that was reached by the
21 Congress.

22 MR. LEAHY: Okay. Thank you for that

1 elaboration.

2 One other question I had, although you
3 didn't go into it in your abridged testimony, you did
4 raise what I thought was interesting. The commission
5 was pessimistic, but overly optimistic at the same
6 time, which is not an easy thing for us to do, but
7 apparently we achieved that in our analysis.

8 I'm curious about this movement to the
9 Western Pacific as a source of tuna for Ecuador and
10 others. Do you have any information on how much is
11 coming from Ecuador at the moment or that Ecuador is
12 bringing from the western tropical Pacific at the
13 moment and how easy it is for them to increase that
14 over time?

15 MR. SZAMOSSZEGI: The only information I
16 have is that they are doing so now, and I do not know
17 how much they are bringing in from the Western
18 Pacific. All I know is that they are doing it now and
19 that it's part of a policy of source diversification.

20 And they would probably increase it as
21 necessary. Whether there's a point that it becomes
22 uneconomic and what that point is I don't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. LEAHY: If you did have any other or
2 were able to come up with any other information on
3 that point, it would be useful to us.

4 That's all the questions I have.

5 CHAIRPERSON SURO-BREDIE: Do we have any
6 more questions?

7 (No response.)

8 CHAIRPERSON SURO-BREDIE: No. Then thank
9 you very much for your testimony, Mr. Cantero-Frau and
10 also to you.

11 Our next witness will be Jake Caldwell of
12 the National Wildlife Federation.

13 We'll give people a minute to gather the
14 testimony.

15 I think we can begin now. Thank you, Mr.
16 Caldwell.

17 MR. CALDWELL: Thank you, Madame Chair.

18 Thank you to the TPSC for this
19 opportunity to comment. It comes at an important time
20 in the negotiations of the FTAA and heading towards
21 the Quito Ministerial, and I really appreciate the
22 opportunity to see you this afternoon.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I am Jake Caldwell. I'm an attorney in
2 the Globalization and Environment Program at the
3 National Wildlife Federation here in Washington, D.C.

4 NWF has been active in trade
5 liberalization and environmental cooperation for over
6 ten years. As most of the panel knows, and I know
7 Madame Chair remembers NWF supported NAFTA. We were
8 a creative and cooperative partner in the NAFTA
9 negotiations, and I think the NAFTA negotiations are
10 instructive for the FTAA and progress on the FTAA.

11 In the sense that the environmental
12 community as a whole was not hostile to NAFTA, there
13 were some disagreements in the environmental
14 community, but in general, the environmental community
15 was there to be a partner in trade liberalization, and
16 I think if we want to move forward on the FTAA, it
17 would behoove us all to try and reengage with the
18 environmental community to move both the environment
19 forward in the hemisphere and trade.

20 We have an historic opportunity here to
21 demonstrate leadership on building a new consensus for
22 trade and the environment. Without that consensus, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 fear that the FTA will not earn the support of the
2 U.S. public and the support of the public throughout
3 the hemisphere.

4 I want to emphasize that word "consensus"
5 because I think the bottom line comes down to sort of
6 a choice in the road, and we have two ways we can do
7 this. We can go one way, which is sort of damn the
8 torpedoes, keep the environment on the sidelines, and
9 sort of bully forward and end up, I think, with a
10 fairly fractious and fragile result that will make it
11 difficult to secure FTAA approval here in the U.S. and
12 throughout the hemisphere.

13 Or we can go the consensus approach. We
14 can take a page out of the NAFTA debate and seek
15 partnership and seek cooperation to move both the
16 environment and trade forward. I think we have an
17 opportunity to do the latter.

18 As a starting point on the road to
19 consensus, the National Wildlife Federation has put
20 forward three principles that are in my written
21 testimony. I just want to highlight them briefly and
22 then get to your questions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Number one would be trade liberalization
2 should support and not undermine environmental
3 protection. Expanding trade and protection for the
4 environment can be compatible, but on an issue like
5 investment and the investor to state dispute
6 settlement mechanism, we have seen that there can be
7 some problems as they affect the domestic
8 environmental laws and the environmental laws of our
9 trading partners in the hemisphere.

10 FTAA negotiations should insure that
11 private investors do not receive rights that enable
12 them to undermine U.S. environmental laws, but those
13 of other countries.

14 The problems with Chapter 11 of NAFTA
15 should not be replicated or duplicated in the FTAA.
16 Specifically we're asking that those bringing
17 expropriation challenges under investment rules will
18 not be granted rights greater than those provided
19 under takings jurisprudence of the U.S. Constitution.

20 We're asking that there be limits on the
21 terms or definitions of the terms "expropriation" or
22 "fair and minimum" or "fair and minimum treatment,"

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 which I believe the latest fast track trade promotion
2 authority does call for a clarification of those
3 terms.

4 We're looking for a general safe harbor
5 for environmental issues, environmental measures,
6 rather, including the possibility of an exception.

7 The possibility of home government, not
8 the government where the alleged violation of
9 investment regulations is taking place, but the home
10 government have the authority to sort of say to an
11 investor, "We don't think this claim holds salt, holds
12 water, and we think it should -- you should not bring
13 this claim."

14 So home government authority to disapprove
15 investor claims, improve transparency, opportunity for
16 amicus brief submissions, and appellate review.

17 And as I said, fast track TPA makes some
18 progress in these areas.

19 More generally, we're looking for trade
20 agreements that must recognize legitimate national and
21 international environmental standards. We're looking
22 for agreements to insure the nations can enforce their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 environmental laws and that they not derogate from
2 their environmental laws.

3 And, again, fast track TPA recently passed
4 does provide some high standards for these efforts,
5 and we're looking for progress in order to secure our
6 support for an FTAA.

7 Our second principle involves the United
8 States promoting global consensus. As you know,
9 there's still quite a bit of disagreement amongst our
10 trading partners in exactly what the role of the
11 environment should be in the FTAA negotiations. We
12 think the U.S. can demonstrate quite a bit of
13 leadership in promoting capacity building, a
14 systematic program to assess the needs of our trading
15 partners on the environment and move forward.

16 In this sense, the lessons of NAFTA,
17 again, can be very instructive in terms of what we can
18 do in the area of international environmental
19 cooperation.

20 My colleagues report from Johannesburg
21 that USTR did put forward a piece on capacity building
22 and trade. Regrettably it had nothing of the -- the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 word "environment" was not a part of that capacity
2 building piece. It's a bit of concern to us that the
3 environmental component of trade was not addressed in
4 capacity building or is not often thought of out of
5 this agency in terms of capacity building.

6 Our third principle would be the trade
7 negotiations and dispute procedures should be open to
8 the public and made more transparent. We applaud
9 USTR's recent efforts in Geneva at the WTO in opening
10 up or at least seeking to have the dispute settlement
11 procedures opened up a little bit more to the public.

12 We would hope and expect that similar
13 things could be done in the FTAA process.

14 In conclusion I just would sign off by
15 saying that I think it's in the interest of all those
16 who support furthering trade and furthering the
17 environment to bring these two together in a forceful
18 manner, with U.S. leadership throughout the
19 hemisphere, and we'll build an FTAA and build a
20 hemisphere that we all can be proud of.

21 Thanks. I'll be happy to take your
22 questions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON SURO-BREDIE: Thank you very
2 much, Mr. Caldwell.

3 Barbara McLeod from EPA will ask the first
4 question.

5 MS. McLEOD: In your suggestions for
6 improvements to the Chapter 11 investor state process,
7 you suggested a safe harbor for environmental
8 provisions. Could you describe a little bit more what
9 you mean by the safe harbor?

10 MR. CALDWELL: Sure. I don't think it
11 obviously is open to some exploration and deserves
12 exploration amongst all stakeholders, both government
13 and nongovernmental business, private sector, but I
14 think it's not as hostile or sinister as it sounds.
15 It's not a blanket safe harbor for environmental
16 measures. It essentially would take its cue from some
17 of the Article XX exceptions that were well known to
18 the panel in traditional trade law and the WTO and
19 GATT law.

20 And it would essentially put some capacity
21 for a state, local, federal government agency that's
22 come under or has received a threatening letter, a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 threatening challenge or a movement towards an
2 international arbitration. It would provide them some
3 avenue to say to folks that, no, we believe that this
4 action on behalf of the environment was in the
5 interest of the environment, and here's why.

6 And sort of as it's traditionally done
7 under U.S. jurisprudence domestically lay out the case
8 for why this was done for environmental reasons, and
9 if the environmental measure does not hold water,
10 again, you know, in terms of measuring up to being
11 legitimately for the environment, then potentially it
12 should be deemed a violation of the investment rules.

13 But at least anchor some of the
14 jurisprudence that's been going on in the Chapter 11
15 arbitrations to some standards that would allow the
16 environment measure to at least have an opportunity to
17 present the environmental characteristics of the
18 measure.

19 So something along Article XX.

20 MS. McLEOD: Thank you.

21 Also, with respect to institutions in the
22 FTAA, you suggest that the U.S. should strengthen, and

1 I'm quoting from your prepared material, strengthen
2 and extend its commitment to environmental cooperation
3 institutions under the NAFTA and beyond.

4 And we were wondering if you had a
5 particular sort of institutional arrangement in mind.

6 MR. CALDWELL: I don't have a magic bullet
7 solution. I think we're most interested in what would
8 be the most effective thing for the hemisphere.
9 Obviously, NAFTA is not the FTAA in all direct
10 comparisons. We've got several other countries to
11 deal with, several other relationships and
12 disproportions on many different levels. So we're not
13 wed to one model or the other in any sense.

14 What we're looking for is what would be
15 the most effective way to move forward on both an
16 international environmental cooperation and on trade
17 liberalization.

18 NAFTA is instructive in that there are
19 things -- this question is often put as was it better
20 to have environmental provisions in the agreement or
21 in a side agreement. In NAFTA we pursued a side
22 agreement model with some environmental provisions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 actually in the agreement as well.

2 That should be something that should be
3 looked at in the FTAA context. I'm not saying it
4 should be all in the agreement or all in a side
5 agreement, but I think there should be a healthy mix
6 of institutions and capacity building that could be
7 achieved and that might be more palatable to our
8 trading partners.

9 So no specific institution in mind, but I
10 think some of the more important efforts and lessons
11 that have been learned from NAFTA should be brought
12 forward, such as citizen submission on failure to
13 enforce, nonderrogation from environmental laws, and
14 some strong transparency measures.

15 MS. BROWN: Thank you.

16 With this many countries participating in
17 the FTAA, do you have any concerns about overlap in
18 environmental institution with UNEP and other
19 multilateral arrangements that exist in the
20 hemisphere?

21 Now I'm speaking about the institution
22 itself, not the structure of the trade agreement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. CALDWELL: Right. I don't have
2 significant concerns about that. I'm not a fan of
3 redundancy either, as most people. So I think perhaps
4 there is a cue there to look at existing institutions,
5 like the OAS and others that could potentially lead
6 the way here in promoting some sort of institutional
7 arrangement that a lot of governments would feel
8 comfortable with.

9 But I would hope that as we move forward
10 on the environmental piece of the FTAA negotiations we
11 are in close contact with our friends at UNEP, at the
12 OAS, UNCTAD, World Bank, IMF, the whole list, and try
13 and make progress on defining a unique and flexible
14 institutional arrangement for the hemisphere.

15 MS. BROWN: Last question, and thank you.

16 We're working very hard on the FRAA, but
17 we also have a couple of other bilateral trade
18 agreements that are coming along quickly. So I'd like
19 to ask whether your recommendation for appellate
20 review, while it, I think, is in trade promotion
21 authority for multilateral agreements, how do you
22 think it would apply to bilateral trade agreements,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 given the resource constraints that would exist?

2 MR. CALDWELL: In the context of the
3 investment issues or any?

4 MS. BROWN: No, overall, across the board.

5 MR. CALDWELL: Dispute settlement?

6 MS. BROWN: Dispute settlement.

7 MR. CALDWELL: I think I may be alone in
8 my views on this, but I don't think so in those that
9 follow trade matters in believing that the WTO's
10 development of an appellate body mechanism has brought
11 a lot of sanity and a lot of stability to the system,
12 to the rules of the WTO and has brought with it a
13 great deal more confidence on behalf of the
14 environmental community in the functioning of the WTO,
15 and a great deal more confidence, I think, even
16 amongst if I can speak for members of the business
17 community and the private sector as well.

18 So I don't see any reason not to pursue on
19 appellate review type mechanism in the bilaterals with
20 Chile and Singapore. I think that can be done, and I
21 think that would be achievable.

22 If there are resource issues, let's get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 those out in the open and let's try and talk about
2 those and try and address that problem.

3 CHAIRPERSON SURO-BREDIE: One additional
4 question from USTR? Jonathan Fritz, please.

5 MR. FRITZ: Thank you very much for your
6 testimony.

7 One thing that you included in the written
8 remarks was a recommendation that environmental
9 reviews be performed, and as you are now aware, we
10 have actually been working on those since the '99
11 executive order, and now it's mandated by TPA. And we
12 certainly look forward to getting NWF's input on the
13 FTAA environmental review.

14 I was just wondering if you folks at NWF
15 have already identified environmental issues that are
16 particularly relevant or do you think that merit
17 particular emphasis as far as the FTA negotiations go?

18 MR. CALDWELL: You know, I don't think
19 anything that would be news to you guys or to anyone
20 else in the hemisphere. I would defer actually to a
21 lot of my colleagues down in the countries throughout
22 the hemisphere for their input on that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 But I must say in terms of the overall
2 environmental review process, we've been slightly
3 disappointed in that it doesn't appear to be living up
4 to either the guidelines, I think, or the executive
5 order in the sense that our hope for the environmental
6 review process, and I can't over emphasize how
7 important we feel the environmental review process is
8 to the future of the trade environment linkage and
9 also just the future of the economic integration
10 either in the Western Hemisphere or throughout the
11 world.

12 This is an important thing to get right,
13 and it's an important thing to do well in order to
14 build trust on so many different levels, and we feel
15 that in many ways the environmental review process to
16 date is still suffering from a bit of the where's the
17 -- we're going forward with trade liberalization.
18 Where's the environmental problems that are associated
19 with that?

20 It's sort of a post hoc look at the
21 issues, and we would prefer to see a little more
22 aggressive stance on some of the positive things that

1 might come out of trade liberalization for the
2 environment, some ways that suggest, okay, we're going
3 to attempt to integrate the economies of these
4 countries. What are some of the gains we can get for
5 the environment on these issues?

6 There does still seem to be a bit of a
7 sense that these are sort of done in a back room by
8 someone locked in, some unfortunate person locked in
9 the room and pounding away on them and not a whole lot
10 of real world experience to that.

11 But we will do our best to get not only
12 our input into you, but also our colleagues throughout
13 the hemisphere on specific issues that might be of
14 concern to you.

15 CHAIRPERSON SURO-BREDIE: Thank you very
16 much, Mr. Caldwell.

17 Did you have another question? No, you're
18 done.

19 Thank you very much.

20 MR. CALDWELL: Thank you.

21 CHAIRPERSON SURO-BREDIE: Our next witness
22 is Maureen Heffern Ponicki of the American Friends

1 Service Committee, U.S. Gender in Trade Network.

2 Good afternoon.

3 MS. PONICKI: Good afternoon. I want to
4 thank you all, as well, for giving us the opportunity
5 to testify.

6 I work for the American Friends Service
7 Committee, which is a Quaker organization that works
8 both abroad and in the U.S., and I'm also here
9 representing the U.S. Gender in Trade Network.

10 And I decided to just talk specifically
11 about a few issues. There are other issues with
12 respect to the FTAA that the FSC has concerns about,
13 but specifically we're going to just touch on a few
14 today.

15 The first is we request that U.S.
16 negotiators demand more clarity in the language that
17 exempts public services from the FTAA. Currently the
18 draft tax relies on exemption as outlined in the GATS
19 agreement, which states that an exemption applies when
20 a service is supplied neither on a commercial basis
21 nor in competition with one or more service suppliers.

22 This definition would not guarantee the

1 exemption of our public education system, nor of our
2 social services. Most governments have farmed out
3 services to nonprofits who compete with other
4 nonprofits and many government services nowadays
5 include fees. Therefore, this exemption would hardly
6 protect these critical services.

7 Furthermore, and I think this is one of
8 the important points, privatization of human services,
9 such as education and social services, should be
10 determined at a local level by the diverse
11 stakeholders in that community.

12 Local communities, as we know, have been
13 tackling this contentious issue of privatization for
14 many years with many differing opinions, and I think
15 the important thing is that we not take that decision
16 away from them by leaving in language that is vague,
17 open to loopholes which could be eroded in future
18 negotiations, and which would be close to impossible
19 to reverse.

20 The national treatment rule contained in
21 the agreement could entitle private foreign companies
22 to equal rights to compete against local public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 service providers for funds to perform public
2 services. This clause also has implications for water
3 collection and water delivery.

4 If private service provision of water
5 causes prices to spike, as they did in Bolivia after
6 the Bechtel Corporation privatized Cochabamba's water
7 system, as is happening in Nicaragua currently, there
8 will be a detrimental impact on poor families, and
9 especially women and children in developing countries.

10 And I think sometimes that may seem
11 redundant, but important to kind of point out.

12 For example, if the price is too high for
13 poor families as a result of privatization, women will
14 be faced with rationing water for their families or
15 substituting unsanitary water for clean water when
16 necessary.

17 Therefore, our recommendation would be
18 that the U.S. government exclude public education,
19 especially K through 12, social services, other
20 critical human services, and water from the FTAA
21 agreement through the use of carve-outs.

22 Secondly, the U.S. government should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 negotiate limits on the number of service providers in
2 a certain sector or region and allow each country some
3 flexibility to protect local businesses that are vital
4 to the national economy.

5 In addition, local governments should not
6 be prohibited from limiting the number of ecologically
7 damaging service activity in a certain area like toxic
8 waste processing, mining, oil drilling, et cetera.

9 Currently the draft text prohibits limits
10 on the number of private education, health care,
11 prison, water supply, and other companies that can
12 operate in a given community, and that's a concern for
13 us.

14 With respect to domestic regulation, the
15 U.S. government should not curtail the ability of
16 national and local jurisdictions to protect the
17 residents. Limitations on domestic regulation through
18 the no more burdensome than necessary language would
19 limit local governments from doing that.

20 Service rules would put worker health and
21 safety laws on staffing, professional standards,
22 licensing, quality and content of education

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 curriculum, and other public interest regulations at
2 risk.

3 The U.S. government should inform the
4 public of how they intend to protect domestic
5 regulations, and we don't see that as prohibiting any
6 type of fair trade.

7 Fourth, with respect to government
8 procurement, the U.S. should be able to use government
9 contracts as a means to promote equity. Currently the
10 draft text would prevent governments from giving
11 preferences to local firms in granting contracts and
12 would ban governments from setting qualifications
13 other than price and quality and consider other kinds
14 of criteria as, quote, unnecessary barriers to trade.

15 Many small, women owned, and other
16 minority owned businesses have been able to benefit
17 from government set-asides and incentives. Workers
18 and concerned citizens across the country have fought
19 hard for the passage of living wage legislation. An
20 agreement being negotiated at the international level
21 should not be able to impact the democratic decisions
22 that are being made at the local level.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The inclusion of these protections, again,
2 will not inhibit fair trade. There is support for the
3 use of government purchasing decisions to promote
4 goals of equity across this country, and we urge the
5 U.S. negotiators not to undermine these democratically
6 made decisions.

7 And lastly, impact assessments. Complete
8 evaluations of the social gender and environmental
9 impacts of a possible FTAA must be conducted. Impact
10 assessments are a necessary intermediate step in the
11 process of educating the public, as well as a
12 prerequisite for negotiating just policies that
13 benefit the majority of people.

14 At a minimum, we request that the U.S.
15 conduct these assessments. We would also expect the
16 U.S. to then advocate for assessments to be conducted
17 by other FTAA countries and at a hemispheric level.

18 Lastly, a critical component which I know
19 has been a contentious component of a legitimate
20 assessment would be a wide and diverse consultation
21 with civil society.

22 Thank you.

1 CHAIRPERSON SURO-BREDIE: Thank you very
2 much, Ms. Ponicki.

3 We have a question from Kimberly Claman
4 and then questions? Mr. Clatanoff.

5 MS. CLAMAN: Thank you.

6 Thank you for coming today.

7 Could you please tell us what your
8 definition of social services is and what is your
9 definition of other critical human services?

10 MS. PONICKI: I think that could be
11 discussed in terms of what the carve-out would be, but
12 for the most part the concern is essential public
13 services that if they weren't protected and provided
14 by the public sector, that there would be problems or
15 risks of access depending on different income levels.

16 So, for example, the provision of welfare
17 right now and the basic income support safety net.
18 That has been, quote, unquote, privatized to the
19 extent that there are different nonprofits, and
20 there's where our concern is.

21 I, for one, used to work for a nonprofit
22 that did some of this work, and so very much there was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 a competitive element and where our concern is that in
2 reading the language of the law, the devil be in the
3 details and how it's interpreted.

4 But anyway, I think the essential services
5 where there would be a concern that somebody of lower
6 income would be eliminated from access, and that's why
7 we also include water as being such an important
8 commodity that all people need access to.

9 But some people would also argue for
10 minimal public health system so that there is still
11 equity of access to health services.

12 Thank you.

13 MS. CLAMAN: You're welcome.

14 CHAIRPERSON SURO-BREDIE: Bud?

15 MR. CLATANOFF: I'm going to start
16 backwards on your testimony. Your last point on this
17 complete evaluation of, quote, social, gender, and
18 environmental impact, you're aware, I'm sure, that
19 since Executive Order 12141 put out in 1999, there
20 have been environmental impacts. Recently enacted
21 trade promotion authority legislation now requires
22 employment impact analysis.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Is this enough?

2 MS. PONICKI: No.

3 MR. CLATANOFF: No. Do you have, or not
4 today, but could you give us a methodology or
5 procedure on how we would do a, quote, social impact
6 analysis?

7 MS. PONICKI: Yes, yes. And I recognize
8 that that is a difficult thing to do, and I think just
9 to state that our concern is especially in the U.S.
10 when we've looked at the impact of trade, we look in
11 terms of employment and wages, and that's important.

12 But trade has changed from what it was 30
13 years ago, and as we look at different things, it
14 includes different aspects that will have a different
15 impact on women and on different sectors of society.

16 So even the trade negotiation process and
17 your ability to influence that, if you were in labor,
18 environment, or by industry, you have a formal seat at
19 the table. But if somebody, let's say a community
20 based organization that has been fighting for the
21 living wage and they have no formal route of access
22 and at the same time we're not formally assessing,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 what would be the impact on somebody like that?

2 And I think that the important thing about
3 assessments is saying trade has changed, and we think
4 trade is important, but as we go forward and as we
5 amplify it to include many more sectors, to include
6 services and not just goods, we need to take a good
7 look at all of these different levels of impacts.

8 So to answer the second question, Women's
9 Edge, which is an organization that looks at gender in
10 trade, they have put together a draft legislation that
11 outlines in extensive detail a methodology for how to
12 go about a social and gender impact assessment, and I
13 can get that on to whoever.

14 MR. CLATANOFF: Okay. Appreciate it.

15 CHAIRPERSON SURO-BREDIE: Would you send
16 it by E-mail to gblue@ustr?

17 MS. PONICKI: G?

18 CHAIRPERSON SURO-BREDIE: G.

19 MS. PONICKI: G?

20 CHAIRPERSON SURO-BREDIE: Blue, b-l-u-e,
21 one word, @ustr.gov.

22 MR. CLATANOFF: Frankly, which I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 understand here, your goal, "the U.S. government
2 should negotiate limits on the number of service
3 providers in certain sector." In particular I see
4 this in your social services again.

5 As I understand what we're talking about
6 in FTAA, if you're -- that's one sector that you
7 mentioned, K through 12. Okay?

8 We're not saying that -- nothing that I
9 have seen proposed with brackets or not would say that
10 you can't have this as a government provision of K
11 through 12, and we're not saying you can't say it's
12 only a government provision.

13 But if you allow private provision of
14 primary education services, you can't exclude foreign
15 investors from it.

16 What's the logic of putting a ceiling, a
17 limit on the number of service providers?

18 MS. PONICKI: Well, I think it would
19 depend on the sector and depend on the concrete
20 situation, but the danger of not providing or making
21 it trade illegal to put a limit is that that decision
22 then gets taken away from a local area who there may

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 be good reason to provide a limit.

2 I think it's probably a little bit easier
3 to see when you look at something like toxic waste
4 processing or other things that may have ecological
5 damage, and if you have more than one service
6 provider, there could be damage.

7 So I think it would depend on each sector.
8 With education, that's a hard one to answer, and I
9 think what the concern is that take Philadelphia, for
10 example. There's been a hard, you know, fight going
11 on there in terms of who should be allocating
12 education services, and we know that the state hasn't
13 done a phenomenal job of that, and there's incredible
14 disparity with our public education system, but that's
15 to be determined at the local level.

16 Let them fight it out. Let's talk about
17 whether the state or private provision of those
18 services.

19 MR. CLATANOFF: That's exactly right.
20 Those should be local decisions. Why then in a
21 multilateral, multilateral trade agreement do you want
22 to mandate a ceiling?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. PONICKI: No, we want --

2 MR. CLATANOFF: That's what your statement
3 says. We should negotiate limits on the number of
4 service providers.

5 MS. PONICKI: The alternate says there
6 shall be no limit. So what the language of the trade
7 agreement is saying is if you put a limit on, that's
8 not all right. So what we're asking for is the
9 flexibility that if you see fit that a limit is right,
10 then go ahead.

11 Then if somebody else says a limit isn't
12 and that jurisdiction wants to let more service
13 provides for whatever service, then they let that be.
14 So it's the flexibility to leave that open, so to not
15 mandate that you can't do that.

16 MR. CLATANOFF: Okay. It's an important
17 clarification.

18 MS. McLEOD: Actually there are exceptions
19 to the performance requirement limitations for
20 environmental and other regulatory systems. So it may
21 not be enough, but we've tried to take that into
22 account.

1 CHAIRPERSON SURO-BREDIE: Thank you very
2 much, Ms. Ponicki.

3 MS. PONICKI: Thank you.

4 CHAIRPERSON SURO-BREDIE: We have joining
5 us on the panel now Barbara Chatten, our market access
6 negotiator for agriculture.

7 Welcome, Barbara. You can sit here.

8 Our next witness will be Jaime Castenada.
9 I hope I'm pronouncing that right, of the National
10 Milk Producers Federation.

11 MR. CASTENADA: Good afternoon, Madame
12 Chairman -- and you did pronounce it correctly. I
13 appreciate it -- and committee member.

14 My name is Jaime Castenada. I'm Vice
15 President of the National Milk Producers Federation
16 and a senior advisor to the U.S. Dairy Export Council.

17 I am pleased to appear before you today to
18 testify on the topic of the free trade area of the
19 Americas and the potential economic impact to the
20 dairy industry and, in particular to U.S. dairy
21 producers.

22 The National Milk Producers Federation

1 represents the large majority of dairy farmers in the
2 United States and the co-ops that they own, and the
3 U.S. Dairy Export Council is a membership organization
4 that represents processors, producers, and exporters
5 in assisting them to expand U.S. exports.

6 Madame Chairman, as is stated in our
7 written comments, an initial view of the economics of
8 supply and demand suggest that the U.S. dairy industry
9 has an incentive to support an FTAA that includes all
10 Western Hemisphere nations.

11 In fact, every Latin American country
12 except Argentina, Uruguay, Costa Rica and Nicaragua is
13 a net importer of dairy products. The region as a
14 whole imports three and a half times as much dairy
15 products as it exports.

16 The United States produced more milk,
17 cheese, milk powder, whey and lactose than all of the
18 other 34 countries in the hemisphere combined. These
19 economic opportunities in Latin America will be
20 hugely complemented by eliminating current trade
21 barriers in our largest trading partner just to the
22 north, Canada.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Madame Chairman, the potential economic
2 benefits from the FTAA are real, but they can only
3 exceed the cost for the U.S. dairy industry if the
4 agreement properly addresses several issues of
5 critical importance to us. Today I will discuss three
6 of the most important.

7 First, rules of origin. As a regional
8 trade agreement, it is imperative that the FTAA does
9 not provide windfall benefits to known parties.
10 Consequently, the first and foremost objectives of the
11 FTAA need to be the specific rules of origin that
12 insures dairy trade benefits to only the member
13 countries.

14 We, therefore, strongly the FTAA include
15 the same rules of origin for dairy products and
16 products containing dairy components, including the
17 minimum rules that are included in the North American
18 Free Trade Agreement.

19 The second critical element, third party
20 export subsidies. FTAA negotiators must also address
21 the issue of export subsidies. If the United States
22 agreed to stop using export subsidies, we must then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 insure that our trading partners do not accept
2 subsidized product from outside the hemisphere. As an
3 example of how critical this element is, in the most
4 recent year of subsidy notification to the WTO, the EU
5 has spent more than 100 times what the United States
6 has spent.

7 A third key element of the economic
8 viability of the FTAA for the U.S. dairy industry and
9 extremely important is the inclusion of the Canadian
10 dairy industry in the agreement. There is a consensus
11 that the failure to bring Canada on board could be the
12 most serious barrier to dairy negotiations.

13 In the past, with the U.S.-Canada free
14 trade agreement, with NAFTA, and with recent trade
15 agreements with Chile and Costa Rica, Canada has been
16 able to keep dairy off the bargaining table. The real
17 challenge for FTAA negotiators will be finding a way
18 to bring the Canadian dairy industry into the
19 agreement.

20 Unfortunately, if Canada wins and it stays
21 out, the U.S. dairy industry may also reject
22 participation in the FTAA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Because of the urgency of this matter, it
2 is inexplicable that a 1998 ERS study on the economic
3 impacts of FTAA assumed that Canada would again exempt
4 its dairy from the agreement, but not the United
5 States.

6 In conclusion, our own estimates would
7 indicate that the range of economic outcomes from the
8 FTAA for the U.S. dairy industry could range from a
9 loss for U.S. dairy producers and U.S. dairy industry
10 in general of well over \$1 billion annually from a
11 badly fought agreement to a gain of over \$400 million
12 per year from an agreement that fully addresses the
13 issues and concerns we have raised in this testimony.

14 Madame Chairman, let me reiterate that we
15 believe that the overall economic net benefits to the
16 U.S. dairy industry would be positive from an FTAA
17 agreement that properly addresses the issues discussed
18 above. But if not, several thousand dairy farmers and
19 small dairy companies will be forced out of business.

20 Therefore, the devil is truly in the
21 details, and the support or position of our industry
22 depends on the type of agreement that is negotiated.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Thank you for the opportunity to testify.
2 I'll be happy to answer any questions.

3 CHAIRPERSON SURO-BREDIE: Thank you very
4 much.

5 MR. KARAWA: Mr. Castenada, thank you very
6 much for your eloquent testimony.

7 As you noted in your testimony, the first
8 critical issue regarding rules of origin or specific
9 rules of origin, and you mentioned that the foremost
10 objective of the FTAA needs to be the specific rules
11 of origin that insure data trade benefits only to the
12 member countries.

13 Have you had an opportunity to review and
14 comment on the proposed FTAA specific rules of origin
15 which are in the original rule at USTR?

16 MR. CASTENADA: We are in the process. I
17 think we're still on time to provide the specific
18 details on the rules of origin, but, yes, we are
19 working on it, and will have specific details on that
20 issue.

21 MR. KARAWA: Thank you. We wanted to make
22 sure that we noted that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. CASTENADA: Let me state, Mr. Karawa,
2 that I appreciate very much what you and Ms. Barbara
3 Chattin are doing in the FTAA.

4 MR. KARAWA: Thank you for your kind
5 words.

6 I have one more question. In your written
7 testimony, you mentioned that you have indicated that
8 you estimate the U.S. imports in milk equivalent units
9 will increase by four million pounds annually without
10 adequate rules of origin.

11 Could you please elaborate how you arrive
12 at these figures?

13 MR. CASTENADA: Yes. What we did is we
14 assume what the possibility of New Zealand, Australia,
15 European dairy exports could actually be going to
16 specific countries in Latin America primarily, and how
17 new plants will be placed there, and what we simply
18 did is try to see how fast they could actually spend
19 and with certain limitations on the amount of product.

20 But obviously Europe has plenty of
21 product. Australia is still growing. New Zealand is
22 still growing, and we can see as an example just Chile

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and other agreements between New Zealand and Nestle,
2 for instance, in the Americas, that could easily
3 expand their ability to export product here, and the
4 only thing they have to do is, for instance, to
5 produce cheese is import nonfat dried milk or milk
6 proteins, a little bit of fat, mix it, and then just
7 send that product here.

8 MS. CHATTIN: You also mentioned in your
9 testimony the importance of addressing third party
10 export subsidies into the hemisphere, and this is
11 something, you know, the leaders or trade ministers
12 agree that we want to aim for the objective of a
13 hemisphere free of agricultural export subsidies, and
14 certainly getting a handle on EU and other users of
15 export subsidies in the hemisphere is a very important
16 aspect of that.

17 It's also a very technically and legally
18 difficult challenge just in terms of developing
19 mechanisms that are consistent with the WTO and that
20 can be applied by FTAA members, and I just wondered if
21 you had any more specific thoughts in terms of
22 possible mechanisms to do that or if at a later time

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 your industry has thoughts, you could communicate
2 those to us because it's something that we're all
3 aiming for.

4 But it is kind of a technical challenge to
5 come up with the best mechanisms in the hemisphere to
6 accomplish this.

7 MR. CASTENADA: Yes. No, I couldn't agree
8 more with you, and I share your frustration of finding
9 a true key mechanism, and to be honest, I mean, the
10 only thing we could ever think about is to actually as
11 you're doing, go for elimination of export subsidies
12 in a multilateral context in the WTO.

13 And in the meantime, make sure that if
14 other countries have access to the markets using
15 export subsidies, we will be able to also use export
16 subsidies as it is in the NAFTA.

17 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
18 Castenada.

19 MR. CASTENADA: Thank you.

20 CHAIRPERSON SURO-BREDIE: Our next witness
21 is Richard Hudgins of the California Cling Peach
22 Board.

1 The floor is yours, sir.

2 MR. HUDGINS: Thank you.

3 Good afternoon, Madame Chair, members of
4 the committee. My name is Richard Hudgins. I'm
5 President of the California Canning Peach Association,
6 here today on behalf of the California Cling Peach
7 Board. With me also is Carolyn Gleason, with the firm
8 McDermott, Will & Emory. She is the board's
9 Washington counsel here in D.C.

10 The board represents all 750 growers and
11 four processors of cling peaches in California. Its
12 membership represents more than 98 percent of the
13 entire U.S. cling peach industry.

14 Cling peaches are used primarily to
15 produce canned peaches and canned fruit mixtures.

16 As the committee may remember from the
17 board's past appearances on FTAA and other trade
18 initiatives, our industry, more than most U.S.
19 agriculture sectors, is highly import sensitive. Our
20 growers and processors stand to lose in important ways
21 if U.S. tariffs on canned peach products are
22 eliminated or even reduced in favor of competitive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 producers in Chile, Argentina, and other Latin
2 American countries.

3 The board is, therefore, asking that our
4 principal cling peach products be excluded from tariff
5 reductions in the FTAA. We are seeking that same
6 treatment for cling peach products in the U.S.-Chile
7 FTA talks. A list of our products and their
8 corresponding U.S. tariffs are included as an
9 attachment to the board's written comments.

10 Our industry's most important products and
11 corresponding tariffs are the 17 percent U.S. tariff
12 on canned peaches, the 14.9 percent tariff on canned
13 fruit mixtures, and the 14 and a half percent tariff
14 on frozen peaches. All three have been identified as
15 import sensitive agricultural products in the trade
16 promotion authority legislation for purposes of trade
17 negotiations, including the FTAA.

18 Moreover, there are products that have
19 repeatedly been shielded from GSP requests because of
20 their trade sensitivity.

21 Our industry's import sensitivity derives
22 principally from a 20 year old dispute with Europe

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 over excessive EU canned peach subsidies. This year's
2 national trade estimate report confirms that EU
3 shipments of heavily subsidized canned peaches
4 continue to distort world markets to the detriment of
5 U.S. producers.

6 Because of the EU subsidies, you will see
7 in Attachment 2 of our written submission that we have
8 lost our entire market in Europe, most of our market
9 in Japan, and more recently, large parts of our
10 markets in Canada and Mexico.

11 This marketing year, U.S. canned peach
12 exports fell to their lowest level in the last 40
13 years, down 40 percent from a year ago. These losses
14 are occurring because we cannot compete with the low
15 subsidized prices of our competitors despite the high
16 quality of our product.

17 Our inability to match subsidized prices
18 has essentially forced us to sell either in the U.S.
19 market or not at all. Unfortunately, even our U.S.
20 market, which has relatively good tariff production,
21 is at risk. Low price imports are entering from
22 Greece, Spain, Chile, Argentina, South Africa, China,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Thailand, and other foreign sources.

2 As shown in Attachment 3 of our written
3 submission, U.S. imports of canned peaches increased
4 again this marketing year, ended last May, reaching a
5 record three million cases, or more than 15 percent of
6 total U.S. canned peach production. This is the
7 equivalent of \$54 million in lost sales based on an
8 average selling price of \$18 a case.

9 Since the U.S. market is mature and
10 dominated by institutional sales, these low priced
11 imports in all instances prevent the sale of U.S.
12 produced canned peaches and severely depress the U.S.
13 market price.

14 Our losses in the U.S. market are on top
15 of other turbulent industry pressures. We continue,
16 for example, to suffer fallout from the bankruptcy two
17 years ago of Tri-Valley Growers, which at the time was
18 the industry's largest processor and grower owned
19 cooperative.

20 This year one of the three processing
21 plants remaining from the Tri-Valley bankruptcy closed
22 its doors. An immediate effect of the closure is that

1 some 1,000 seasonal workers are out of a job.

2 With that closing, the industry has gone
3 from 20 processing plants canning peaches to just
4 seven in the space of only ten years. Once again, the
5 principal reason for the closure is the growing
6 competition from low priced imports.

7 Moreover, this year, we face a large cling
8 peach crop and the prospect of larger carryover stocks
9 next year. Since the U.S. market is now our only
10 outlet for most of this production, our growers and
11 processors cannot afford further losses in U.S. sales.

12 Both the industry and the U.S. government
13 are working hard to stabilize the U.S. market and
14 return U.S. growers and processors to profitability.
15 Our efforts include several industry funded tree pull
16 programs and a record level U.S. government purchase
17 surplus canned peaches this year for school lunch and
18 other federal programs.

19 The industry and the USDA are also jointly
20 funding export promotion programs to try to increase
21 our lagging exports. These efforts to restore
22 profitability cannot succeed, however, if our sales

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and price structure in the U.S. market are further
2 eroded.

3 Simply put, without adequate protections,
4 further erosion is inevitable under the FTAA. Chile
5 and Argentina are already competitive producers and
6 exporters of canned peaches and other cling peach
7 products. We have heard directly from producers in
8 both Chile and Argentina that they intend to export
9 more canned peaches to the U.S. market if our U.S.
10 tariffs are eliminated or even reduced under that or
11 other trade initiatives.

12 There are no reciprocal opportunities in
13 the Latin American markets for U.S. canned peaches
14 even with duty free access. Chile, Argentina and
15 other FTAA countries are small canned peach markets,
16 primarily for low priced product, and are fully
17 supplied by Latin American producers under regional
18 trade agreements.

19 Thus, for our industry, FTAA will not be
20 welcomed. Because the U.S. market is so critical to
21 our industry's recovery, we cannot return to being a
22 profitable U.S. agriculture sector unless our U.S.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 duties are maintained.

2 We need the U.S. government's support to
3 insure that canned peaches and other import sensitive
4 cling peach products are exempted from tariff
5 reductions in the FTAA. If exemptions from tariff
6 elimination are not granted on any products, then our
7 industry needs assurance that our import sensitive
8 products will be granted the longest phaseout period
9 permitted under FTAA.

10 Members of the committee, our industry
11 appreciates this opportunity to discuss our FTAA
12 concerns with you. I would be happy to respond to any
13 questions you may have.

14 CHAIRPERSON SURO-BREDIE: Thank you very
15 much.

16 We'll turn to you, Barbara. Do you have
17 any questions?

18 MS. CHATTIN: Yes. We appreciate you
19 coming here to testify, and I think we all recognize
20 the sensitivity of the cling peach industry in these
21 negotiations.

22 I would just point out something I'm sure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you already know, that the ministers have agreed that
2 a basic principle of the negotiation is that all
3 tariffs are subject to negotiation. That doesn't
4 preclude where you end up, but in terms of an approach
5 to the negotiations, all countries have agreed that
6 all of their tariffs will be subject to negotiation.

7 One question I had was I listened very
8 carefully to what you said about having the longest
9 possible phaseout time if all products end up being
10 phased out. I was just wondering if it would be of
11 any value to your industry during that usually -- I
12 mean staged elimination of tariffs is certainly
13 something that's a very standard part of any kind of
14 tariff negotiation. So that's an idea that we clearly
15 can work with your industry on.

16 But if, in addition, there would be a
17 value to your industry in terms of thinking of
18 transitional safeguard measures, measures in the
19 context of the FTAA -- I'm not talking about changing
20 any of the fundamental legislation or changing
21 fundamental WTO provisions -- but some sort of
22 safeguard mechanisms developed in the context strictly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the FTAA might be something that might be of
2 interest to your industry.

3 MR. HUDGINS: Remember that our industry
4 comes from a background of nearly 20 years of dispute
5 with regard to the canned peach subsidies in Greece,
6 and so understandably, we are somewhat leery for a
7 theoretical based adjustment program.

8 What we do understand are tariffs, and we
9 do understand that we need the maximum protection
10 afforded to us in a phaseout of tariffs, backloading
11 any reduction to the maximum extent possible so that
12 we are afforded the minimal impact on the front end of
13 any tariff reduction.

14 Certainly, I recognize that we have just
15 come off a record year of cling peach imports, and we
16 cannot stand any further import pressure from anywhere
17 in the globe.

18 MR. KARAWA: I would like to reiterate
19 what Barbara just mentioned about that we do
20 understand your concerns, and we do also share your
21 frustrations, especially with the EU subsidizing
22 imports.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 However, I would like to ask you if you
2 could elaborate further. You said you had some
3 economic adjustment programs which are underway.
4 Could you give us more? How do you foresee that these
5 programs are going to work out? And what kind of
6 results are you getting so far?

7 MR. HUDGINS: Most recently we have been
8 working with the USDA under the market access program
9 to try to expand the limited export sales
10 opportunities that are available to our industry. As
11 I said, we have essentially lost the entire market in
12 Europe, essentially all of Japan. We have been
13 reduced to essentially focusing on the neighboring
14 countries, Canada and Mexico.

15 We have put grower funds to go with the
16 USDA MAP monies into both Mexico and to Canada. In
17 addition, the Cling Peach Board has put additional
18 grower funding into Mexico to try to expand our export
19 sales into Mexico for the current crop year.

20 At this point we have seen a small measure
21 of success in Mexico, have seen no incremental sales
22 to date in Canada. So, again, it's an ongoing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 process. It is one where we are continuing to try to
2 maintain those markets that do not require us to put
3 product on the water, but know that we are up against
4 foreign competition that can undercut us in
5 essentially any market in the world in which they
6 choose to enter.

7 CHAIRPERSON SURO-BREDIE: Mr. Leahy from
8 the ITC.

9 MR. LEAHY: Okay. Just one quick
10 question, and I'll probably to my chagrin find out
11 that you've already given the ITC this information at
12 some point in time.

13 But you mentioned Chile and Argentina as
14 being some of the countries that have been part of the
15 big increase to imports. Can you give me some idea of
16 just how they compare to the Europeans and others in
17 the market?

18 MR. HUDGINS: The real players for us with
19 regard to imports coming into the U.S. obviously are
20 the EU. The EU would account for about 75 percent of
21 the import volume coming into the country this past
22 year.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chile would account for less than five
2 percent of the total imports coming into the country.
3 Argentina, a small number as well.

4 Bear in mind though that the Chileans and
5 to a lesser degree the Argentineans are also supplies
6 to the market in Mexico, and as such, we lose
7 additional opportunities to export into Mexico as a
8 result.

9 MR. LEAHY: If Chile and Argentina were to
10 benefit from liberalized tariffs in the U.S. market,
11 would that help them in their competition with the EU?

12 MR. HUDGINS: if the Chileans and the
13 Argentineans were to receive duty reductions coming
14 into the U.S. market, there is no doubt in my mind
15 that we will see more imports from those countries
16 entering the U.S. market.

17 They have the same frustrations and
18 competing with the low priced Greek product in other
19 markets around the world. The U.S. market is still a
20 very attractive market for all of the players, and we
21 will see more product entering what is already a
22 burdensome domestic industry from Chile and Argentina.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON SURO-BREDIE: Thank you very
2 much.

3 Our next witness is Dennis McDonald on
4 behalf of the Ranchers-Cattlemen Action Legal Fund,
5 United Stockgrowers of America.

6 Welcome, Mr. McDonald.

7 MR. McDONALD: Hello, Madame Chairman,
8 ladies and gentlemen. I'm Dennis McDonald. My wife
9 Sharon and our four children live and ranch in south
10 central Montana. We operate a cow-calf operation.

11 I traveled from Montana to here to give my
12 comments this afternoon and to hopefully make use of
13 your valuable time. I have done so because I have a
14 profound love and passion for ranching, our heritage
15 and our culture.

16 In addition to being associated with
17 RCALF-USA, I am the Montana Cattlemen's Association
18 Vice President and have served on the ATAC Committee
19 for the last four years.

20 I travel to Argentina, Brazil, and Uruguay
21 in connection with the Sixth Business Forum of the
22 Americas last year, and I'm schedule to travel to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 Ecuador in October.

2 I come before you at a time when the live
3 cattle industry and the family grassroots level in
4 this country is in a state of crisis. We have been
5 producing the best tasting, the most nutritious, the
6 cleanest, healthiest cattle in the world, and we are
7 in the eighth year of marketing our product at or
8 below cost of production.

9 Recently USDA has reported that we have
10 lost 72,000 family ranching operations in the country,
11 and more recently we have lost 14,000 family feeding
12 operations in feedlots across the country.

13 The recent U.S. calf crop as reported in
14 2001 was the smallest since the 1950s. U.S. producers
15 have not produced enough cattle to meet our domestic
16 beef demands since the late 1940s.

17 However, between 1996 and 2000, cattle
18 imports into the U.S. have increased by 11 percent and
19 live finished cattle prices have declined 20 percent.

20 My family just finished feeding a pen of
21 excellent cattle. The cattle graded 85 percent choice
22 or better. They were all natural cattle, that is, no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 hormones, no antibiotics, raised in the most
2 environmentally prudent manner.

3 We lost \$140 per head over our cost. I
4 suffer this loss against the backdrop of the U.S.
5 importing nearly 2.6 million head of live cattle from
6 Mexico and Canada.

7 Increased imports of beef have also
8 reduced returns to U.S. cattle producers. The rule of
9 thumb within the industry is that a one percent
10 increase in beef supplies decreases prices of live
11 cattle by one and a half to two percent.

12 I am aware that the cause of our economic
13 stress is multifaceted. Concentration in the packing
14 industry and lack of marketing power by family
15 producers certainly contributes to the losses we're
16 suffering.

17 But cheap beef imports often controlled by
18 these same market forces exaggerate the ultimate
19 downward effect on producers' bottom line.

20 Currency fluctuations, of course, are also
21 a factor, but the ultimate result cannot be mistaken.
22 It manifests itself in the boarding up of our rural

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 main streets, the closing of our rural schools. It
2 threatens our culture, our heritage, and our way of
3 life.

4 I believe ranching in the rural United
5 States has a contribution to make to American values
6 and actually contributes to the moral compass of our
7 country.

8 The market results of increased cheap
9 foreign beef and live cattle have not benefitted the
10 consumer. In the face of record imports and record
11 availability of beef, consumer prices have risen to
12 historic highs, while family producers continue to
13 receive a smaller portion of the retail dollar, 70
14 percent in the late 1970s, 40 percent today.

15 In 2001, retail prices were nine percent
16 above 2000 levels. Beef imports reached historic
17 levels. Australia, for example, reached its end quota
18 limit and will do so again this year, as will New
19 Zealand.

20 While fed cattle prices were 14 per
21 hundredweight lower, resulting in losses to finished
22 cattle producers of approximately \$160 per animal, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 conclude, therefore, that changes in tariffs which
2 result in lower cattle prices will not necessarily
3 also reduce retail beef prices for consumers.

4 In my written submission I have discussed
5 the effect of imports on the historic cattle site. I
6 won't take time to repeat these remarks other than to
7 say the cycle has been disrupted and elongated.
8 Presently the live cattle industry is contracting, and
9 liquidation is in full swing.

10 It is exasperated by areas of severe and
11 prolonged drought throughout the country and
12 grasshopper infestations.

13 Under the Trade Promotion Act of 2002, all
14 agriculture products that are subject to a TRQ are
15 deemed import sensitive agriculture products. Given
16 the close connection between changes in beef supplies
17 and live cattle prices, it is entirely appropriate for
18 USTR to consider cattle to also be an import sensitive
19 agriculture product.

20 Senators Grassley, Harkin, Baucus,
21 Daschle, and others in their colloquy attached to the
22 TPA legislation categories cattle as such. This

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 categorization is particularly important in the
2 proposed FTAA.

3 Brazil's cow herd exceeds 165 million head
4 of cattle. Argentina has another 55 million head.
5 Add Uruguay, Venezuela, Colombia, Ecuador, and on and
6 on, and pretty soon you're talking real numbers.

7 The U.S. cow herd, by the way, in
8 comparison is 96 million head, and you can see that
9 the potential is there to overrun and ruin our
10 domestic live cattle industry.

11 Last year in Brazil I was there. A 750
12 pound calf off grass was selling for the equivalent of
13 35 cents per pound. Our cost of production for the
14 same weight calf as reported by USDA is 76 cents,
15 higher in the northern tier states because of winter
16 feed costs, lower in the South, but that's the
17 average.

18 Recently finished cattle in Argentina was
19 selling for as low as 18 cents a pound U.S. Presently
20 finished cattle prices in the U.S. were in the mid-
21 60s, and I've covered the losses being sustained as a
22 result thereof.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 It's probably not appropriate here to
2 discuss health concerns associated with South American
3 beef and cattle. That's for another day. But it's an
4 issue on every U.S. producer's mind.

5 Often the effects of health problems are
6 borne by innocent producers who never benefit from the
7 imports. I'm thinking of the bovine TB problem
8 presently in Texas and the enormous cost that
9 producers in Texas may realize as a result of losing
10 their TB free status.

11 I know my time is about up, but in view of
12 the few thoughts I've shared with you, I urge you to
13 consider the impact on family cattle producers as we
14 launch FTAA negotiations and the inevitable lowering
15 of tariffs and perhaps eliminating tariff rate quotas
16 on beef, hopefully over some prolonged period of time.

17 Remember your actions which may benefit
18 the large, global conglomerates may not necessarily
19 benefit family producers of live cattle across rural
20 America.

21 Finally, one last comment on country of
22 origin matters. I've had the opportunity recently to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 travel across 12 states and speak to many cattle
2 organizations. No issue is more important to
3 producers than country of origin labeling.

4 Producers felt we won a tremendous victory
5 by having Senator Johnson's consumer's right to know
6 legislation incorporated into the farm bill, which our
7 President signed. We are greatly concerned that
8 perhaps USTR may undertake to use a different
9 definition other than that which is now the law of the
10 land.

11 Thank you, and I'd be happy to answer any
12 questions you might pose.

13 CHAIRPERSON SURO-BREDIE: Thank you for
14 traveling so far to give your testimony.

15 Do you have questions, Barbara? Shall we
16 go first to Omar?

17 MS. CHATTIN: Yeah.

18 MR. KARAWA: Thank you, Mr. McDonald, for
19 your testimony.

20 I have one question. This is regarding to
21 your written testimony. You suggested in testimony
22 that special rules should be developed for the

1 treatment of perishable and cyclical agriculture
2 products.

3 In order to understand better, could you
4 provide us what kind of ideas you have or what kind of
5 special rules are you contemplating?

6 MR. McDONALD: First, to put it in proper
7 context, the industry is concerned with the situation
8 that we experienced in 1998 with collapse in commodity
9 cattle prices and rising imports. So we have
10 suggested a snap-back formula that might encompass the
11 ten-year average, the last ten-year average on cattle
12 prices and relate that to either tariff rate quotas or
13 tariffs sufficient to realize that ten-year average on
14 cattle prices.

15 I've heard other suggestions. There may
16 be other formulas. You know, we're not married to
17 that concept, but we do feel strongly that we need
18 some protection in those instances, again, with
19 collapsing commodity prices and rising imports to
20 protect the industry.

21 MS. CHATTIN: You had mentioned in your
22 oral statements about the relative cost of production

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of live cattle in various countries. Do you have any
2 estimate in terms of transportation costs what it
3 would cost like to transport cattle from like Brazil
4 or Argentina to the U.S.?

5 MR. McDONALD: I do, Barbara. A year or
6 so ago I was feeding cattle at Grand Island, Nebraska,
7 and that entity had calculated that that 35 cent calf,
8 750 pound calf, that they could purchase in Brazil,
9 they could unload it in Houston for an additional 25
10 cents, which put that calf in Houston at around 60
11 cents, still 16 cents below our cost of production of
12 the same animal.

13 MS. CHATTIN: Okay. Thank you.

14 CHAIRPERSON SURO-BREDIE: Anymore
15 questions?

16 (No response.)

17 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
18 McDonald.

19 Our next witness is Susan Brauner,
20 Director of Public Affairs, Blue Diamond Growers.

21 MS. BRAUNER: Madame Chairman and members
22 of the committee, it's a pleasure to be with you this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 afternoon and to discuss the importance of negotiating
2 an agreement to create a free trade area of the
3 Americas. We certainly support this effort, and we
4 look forward to its completion.

5 With me this afternoon is our counsel,
6 Julian Herrin.

7 I am testifying today as a representative
8 of Blue Diamond Growers. We're located in Sacramento,
9 California. Blue Diamond is a nonprofit, farmer owned
10 marketing cooperative. It markets almonds for its
11 members. The almonds are grown exclusively in
12 California and are the largest tree nut crop in the
13 state.

14 Almonds are the number one agricultural
15 export from California. They rank in the top three
16 consumer food items in this country.

17 Blue Diamond Growers exports for the
18 majority of the almond growers in the State of
19 California. Production continues to expand in order
20 to supply the world.

21 Over 75 percent of the world's supply of
22 almonds is produced in the State of California. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 products covered by this submission on almonds are as
2 follows: in shell, 0802.11.00; shelled, 0802.12.00;
3 prepared or preserved, 2008.19.40.

4 The primary objective for almonds during
5 the upcoming negotiations should be to eliminate all
6 almond tariffs within the FTAA. This objective is
7 consistent with Blue Diamond's objective for the WTO
8 negotiations.

9 Almonds lend themselves well to
10 accomplishing this. Over 75 percent of the world's
11 production is produced in California. There's very
12 little almond production in the FTAA countries. Only
13 Chile is recognized as a minor producer.

14 Nevertheless, Chile imports almonds from
15 the United States. Because of the trade patterns for
16 almonds, it should be possible to achieve a zero duty
17 within the FTAA. All FTAA countries and their
18 consumers would benefit from the elimination of the
19 existing duties.

20 It is urged that careful consideration and
21 attention be given to eliminating all duties on
22 almonds. This is especially true since all of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 major countries have duty rates below 15 percent.

2 Our two biggest FTAA trading partners,
3 Canada and Mexico, are both already at zero duty.

4 You have before you my complete testimony.
5 So I will not repeat all of it at this time with the
6 understanding that it will be studied carefully. Your
7 attention is directed to the countries which are most
8 important to the almond trade.

9 Argentina imports almonds from California.
10 Last year imports totaled over \$382,000. The current
11 tariff is 12 and a half percent for both shelled and
12 in shell almonds.

13 It is believed that with a zero duty
14 almond exports from California would reach the level
15 of \$500,000 in five years. Brazil imports almonds
16 from California. Last year its imports totaled almost
17 \$1 million. The current tariff is 12 and a half
18 percent for both shelled and in shell almonds. It is
19 believed that with a zero duty almond exports from
20 California would reach a level of \$2 million within
21 five years.

22 Brazil has just recently imposed a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 significant nontariff barrier in the form of an import
2 requirement requiring certification from local
3 authorities as to the safety of the product and
4 various other similar requirements.

5 The United States has recently sent a
6 demarche on this issue. The U.S. has asked that this
7 issue be placed on the agenda for the November meeting
8 in Geneva of the WTO sanitary and phytosanitary code
9 working group. This issue should be addressed if it
10 has not been previously resolved.

11 Chile imports almonds from California even
12 though it is a small producers. Last year its imports
13 totaled almost \$840,000. The current tariff is eight
14 percent for both shelled and in shell almonds. It is
15 believed that with a zero duty, almond exports from
16 California would reach the level of \$2 million in five
17 years.

18 Colombia imports almonds from California.
19 Last year its imports totaled over \$100,000. The
20 current tariff is 15 percent for both shelled and in
21 shell almonds. It is believed with a zero duty,
22 almond exports from California would reach the level

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of \$200,000 in five years.

2 Venezuela imports almonds from California.
3 Last year its imports totaled over \$1.7 million. The
4 current tariff is 15 percent for both shelled and in
5 shell almonds. It is believed that with a zero duty,
6 almond exports from California would reach the level
7 of \$4 million in five years.

8 It is hoped that this helps explain why
9 the U.S. should make obtaining a zero duty for almonds
10 a priority during these negotiations. We are prepared
11 to provide any information, assistance or support
12 necessary to achieve this goal.

13 Thank you very much for your close
14 attention. It would be a pleasure to answer any
15 questions that you may have.

16 CHAIRPERSON SURO-BREDIE: Thank you very
17 much, Ms. Brauner.

18 Shall I start with you, Omar?

19 MR. KARAWA: Thank you, Ms. Brauner. I
20 promise we'll study it very carefully.

21 MS. BRAUNER: Thank you very much.

22 MR. KARAWA: I have two questions. One,

1 you note in your testimony that the primary objective
2 is tariff elimination. Are there any other objectives
3 under your organization?

4 MS. BRAUNER: Other than cheating the zero
5 for zero?

6 MR. KARAWA: Yes.

7 MS. BRAUNER: That's our prime objective.

8 MS. CHATTIN: Can I just follow up on
9 that?

10 You've mentioned one problem in Brazil on
11 this certification issue. I just wondered if not now,
12 if you could be thinking about are there technical
13 barriers to almonds. Are there SPS issues involving
14 almonds in these countries?

15 I think that's kind of what Omar was
16 trying to get at, was if we have zero duties, let's
17 try our best to insure that that really does mean
18 unfettered access and that, you know, barriers that
19 tariffs provided aren't just offset by some other
20 kinds of mischief.

21 MS. BRAUNER: Phytosanitary and other sort
22 of distortions continue to be a problem around the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 world, but for the moment in South America, it's this
2 particular problem in Brazil.

3 But thank you for your interest in that
4 area.

5 MR. KARAWA: The other question is you
6 note in your written testimony some countries which
7 you consider very high priority in tariff elimination.
8 Could you provide not now, maybe in the future a list
9 how you rank these countries as to importance of
10 priority?

11 MS. BRAUNER: Yes, we can. They pretty
12 much rank themselves in my testimony with Venezuela
13 being at the top. They are currently the top
14 importers of U.S. almonds at about the \$2 million
15 level, which we think would double. So that would be,
16 but we can do that.

17 Thank you.

18 CHAIRPERSON SURO-BREDIE: A question from
19 Dan Leahy.

20 MR. LEAHY: One quick question. Given the
21 lack of almond production in the other FTAA countries,
22 if you achieved a zero for zero, who would you be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 competing with in those markets for this increased
2 access?

3 MS. BRAUNER: Well, the fact that
4 California produces 75 percent of the world's supply
5 and this year we have a record production of 980
6 million pounds in California; we think the Chilean
7 supply is somewhere around four million. So we really
8 see very little problem with any almonds being grown
9 as Chile, you know, as competition. They're already
10 a net importer of California almonds. So we're very
11 lucky in that we have most of the world's supply and
12 going upwards.

13 MR. LEAHY: I won't ask you the question
14 of what you compete with in that market because then
15 we'll get into a very long discussion of what's like
16 and directly competitive with almonds.

17 MS. BRAUNER: Thank you very much.

18 CHAIRPERSON SURO-BREDIE: Our next witness
19 is Wythe Willey of the National --

20 MR. WILLEY: Wythe Willey.

21 CHAIRPERSON SURO-BREDIE: I'm sorry. I'll
22 try that again. Would you correct it for the record?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. WILLEY: Wythe Willey.

2 CHAIRPERSON SURO-BREDIE: Wythe Willey of
3 the National Cattlemen's Beef Association.

4 MR. WILLEY: Thank you, Madame Chairman.

5 With me is Chuck Lambert, who is with the
6 National Cattlemen's Beef Association staff. He's our
7 chief economist.

8 We don't have a corner on the world's beef
9 supply. So we have some different problems for you.

10 I'm the elected President of the National
11 Cattlemen. I'm a farmer. I live near Cedar Rapids,
12 Iowa, eastern Iowa.

13 Cedar Rapids as a community is sometimes
14 called the community that has the largest export per
15 capita of any city in the nation. So we do a lot of
16 exporting in addition to agricultural exports.

17 Generally, let me say thank you for giving
18 us some time. With all of the hard work, you've been
19 sitting here a long time today.

20 We appreciate the President's position on
21 trade. We support the President very strongly in the
22 recent trade agreement and Ambassadors Zoellick and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Johnson and Secretary Venneman and all of the other
2 members of the administration that you represent.

3 We have worked tirelessly for trade
4 promotion authority. We support that agenda because
5 it's the right thing to do for the nation's
6 agriculture, cattle producers, and for the country.

7 I must tell you, as you've seen from some
8 of the other testimony given here, we are facing a
9 groundswell of growing suspicion of trade and
10 strengthening isolationist and protectionist movement
11 in some parts of the country, the heartland and some
12 of the West.

13 Any agreements negotiated under TPA must
14 be favorable for U.S. agriculture and its products or
15 the administration or those who support trade as
16 strongly as we do run the risk of being criticized and
17 abandoned by some of our constituencies.

18 In other words, we need a big pro trade
19 win for U.S. agriculture at the negotiating table.
20 I'm a lot of responsibility on you all, but that is
21 important, and frankly, we cannot support approval of
22 any agreement that delivers less.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 In that vein, we were concerned to read
2 recent press accounts from Ambassador Zoellick that we
3 may have zero tariffs, that those may be imminent. If
4 the ambassador's request is anything more than a
5 request for an evaluation, there could be extreme
6 political consequences for us all.

7 For example, the European Union has a
8 current tariff at 57 percent, with a 20 percent in
9 quota tariff. Even if those tariffs were reduced to
10 zero tomorrow, we would not be able to sell U.S. beef
11 to European customers. The WTO illegal ban imposed by
12 the economic union because we use scientifically
13 proven production technology is still unresolved, and
14 even the so-called hormone free beef to Europe, we
15 have no access to Europe. We have one little plant
16 that's qualified.

17 They simply block all of our production
18 and all of our exports.

19 A reduction in U.S. beef tariffs or
20 expansion of tariff free quotas would only be
21 acceptable as an overall trade package favorable to
22 the U.S. beef industry.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 In addition, we are concerned that the
2 beef industry is protected from surges in imports,
3 predatory pricing activities, especially when unfair
4 trade business practices are contributing factors.

5 A system of tariffs and TRQs provides that
6 safety net. A good example of an advance in trade,
7 the WTO accession agreement with China established an
8 aggressive target for beef tariffs by reducing most
9 beef tariffs in China from 45 percent to 12 percent by
10 2004.

11 We believe that the 12 percent is a worthy
12 target and should be the objective for global beef
13 tariffs. And that objective is consistent with the
14 administration's proposal for WTO agricultural
15 negotiations and can be supported by the nation's beef
16 producers if it's part of a comprehensive package that
17 supports increased access for U.S. beef.

18 If China can reduce their tariffs from 45
19 to 12, certainly other countries could do the same.

20 To set the stage a little bit, the U.S. is
21 the world's largest beef market, in part, because of
22 the promotion and self-help efforts by cattlemen to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 promote their own product. We're also the largest
2 importer and the world's second largest beef exporter.
3 We're in a unique position.

4 Due to that, we must consider balance,
5 equity, and fairness of any proposed trade initiative
6 to insure that any agreements to provide as much or
7 more access for U.S. beef as we give for our imported
8 beef.

9 Perceptions, and you've heard some of
10 them, are that this has not always been the case. But
11 we do have the most open, least restrictive major beef
12 market in the world.

13 On the other hand, we've had some
14 tremendous successes and have witnessed first hand the
15 value of market opening trade agreements. As a direct
16 result of NAFTA and related political reforms, the
17 Mexico economy has grown. Disposal income has
18 increased among an expanding middle class. Exports of
19 beef and beef variety meats to Mexico have increased
20 more than fivefold from 163 million in 1993 to 775
21 million in 2001.

22 The first six months of the year, they

1 increased another 13 percent. It's a real success
2 story.

3 In a world of unlimited trade issues and
4 limited negotiating resources and time, our
5 organization would strongly prefer that you all focus
6 your efforts on the world trade organization's
7 multilateral initiative. That fits with our goal of
8 not supporting increased access to U.S. beef market
9 piecemeal until meaningful access and tariff
10 reductions is achieved in other major beef importing
11 countries.

12 Because several South American countries
13 obviously export beef and many of the major importers
14 are in Asia and Europe, this balance objective can
15 only be achieved through the WTO negotiations.

16 A couple of other comments for you. We do
17 not outright oppose free trade agreement of the
18 Americas, but we want it to be on a parallel track
19 with the WTO.

20 We're very concerned about science based
21 regulations to protect U.S. herd health, and any trade
22 agreement must obviously include those overriding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 concerns about herd health and biosecurity.

2 We've witnessed first hand the tremendous
3 economic and governmental cost of foot and mouth
4 disease and BSE in Europe and in England, and our
5 country is free. We've got an excellent track record,
6 but we know the problems would arise from allowing
7 imports, would cause a problem.

8 And I must tell you that our cattlemen are
9 extremely sensitive to the health of their herd and
10 the reputation of their beef safety programs.

11 A number of South American countries are
12 now not sending anything other than foot product here.
13 They will probably be achieving foot and mouth disease
14 safety soon, and so that will be an issue. They'll
15 resume exporting to us.

16 Export subsidies. Our industry does not
17 use export subsidies. We strongly support the
18 administration's proposal to phase out export
19 subsidies within five years.

20 The European Union and other countries
21 seem to be excess with U.S. export credits. From our
22 standpoint, we would be willing to go to zero if the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 European Union went to zero also.

2 Domestic supports. Our industry, the beef
3 industry, that is, is not directly supported by the
4 farm bill, and we are among the least subsidized of
5 any international beef industry. We would be willing
6 to work with the administration to develop strategies
7 to reduce overall domestic support.

8 The U.S. intends to live up to its WTO
9 commitments that circuit breakers in the 2000 farm
10 bill will be triggered if the U.S. exceeds those
11 commitments.

12 We support the administration's proposal
13 to reduce those domestic supports to five percent of
14 the value of total agricultural production.

15 We would be interested in domestic
16 supports in the global beef industry, particularly the
17 European Union and those countries that want to become
18 part of the European Union be minimized, and we would
19 consider a zero for zero proposal or proposal for
20 substantial reduction in domestic supports in the meat
21 sector.

22 Access issues. We have the least

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 restricted and largest beef market in the world. Beef
2 markets in other developed countries are virtually
3 closed to U.S. beef or protected by relatively high
4 tariffs. We have granted, the U.S., that is, other
5 countries almost 700,000 metric tons of TRQ at zero
6 duty with a 26 percent tariff becoming effective when
7 the countries fill their quota.

8 Of that, Australia gets 54 percent, New
9 Zealand 31 percent. The remaining 15 percent is
10 allocated to countries primarily in South America.

11 We would support continued movement toward
12 reduced tariffs and expanded TRQs, but only as a
13 comprehensive package that addressed export subsidies,
14 production subsidies and continuing and growth lists
15 of sanitary, phytosanitary, and technical barriers to
16 trade issues.

17 In summary, I'll be glad to answer any
18 questions you might have. I appreciate the chance to
19 come and talk with you a while. We wish you good luck
20 in the world trade and FTAA negotiations.

21 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
22 Willey.

1 Questions?

2 MS. CHATTIN: I had a couple of questions.
3 In the context of the FTAA negotiations, you had
4 alluded very generally to SPS issues. We're very
5 aware of the concern that the industry has on foot and
6 mouth disease and on BSE and we're not going to lower
7 our standards in the FTAA negotiation.

8 But one of the things that would be very
9 helpful to us is either now or perhaps you could tell
10 us later: are there specific SPS or inspection type
11 issues, barriers to our beef exports in some of the
12 Latin American countries?

13 We're working on some of those problems in
14 the context of Chile, but one of the things that we
15 would like to do in the context of the FTAA is try our
16 best to address, you know, issues other than tariffs.

17 So if you had any observations now or in
18 the future, we'd really be willing to and would like
19 very much to work with you on that.

20 MR. WILLEY: And we do maintain an office
21 here, as you probably know, in Washington, and we have
22 a very competent staff that works with APHIS and the

1 Department of Agriculture.

2 We met with the Uruguayan ambassador this
3 morning and talked about their hoof and mouth status
4 and under a vaccination program, and frankly, the
5 problem does not seem to be in the Americas. The
6 problem is generally with Europe and those countries.

7 So I don't think that should be that big
8 an issue, the free trade area of the Americas.

9 MS. CHATTIN: And also just to clarify my
10 understanding, I know you were talking and sometimes
11 in a more general basis than just the FTAA talking
12 about domestic support, export subsidies, issues like
13 that, which are very important in the WTO
14 negotiations, but what is your position in terms of
15 negotiating disciplines on like domestic support in
16 the FTAA?

17 That's something that we're being
18 pressured by, to be honest, a lot of our trading
19 partners who very much want to negotiate those
20 commitments in the FTAA. I think Secretary Venneman,
21 Ambassador Zoellick have been very unequivocal that we
22 think that belongs in the WTO, and we've tabled a very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ambitious WTO proposal.

2 But I just would appreciate knowing the
3 position of the Cattlemen's Association in terms of
4 that particular issue.

5 MR. WILLEY: Frankly, we're probably at
6 some odds with other agricultural commodities. We're
7 simply not supported by any government programs.
8 Cattlemen, most of them, are a pretty independent lot,
9 and so we don't worry about that, and we would give on
10 those points for some other things.

11 MS. CHATTIN: Other people's subsidies for
12 some other things.

13 MR. WILLEY: Well, we'll give up the rice
14 and corn subsidies for access for beef.

15 (Laughter.)

16 CHAIRPERSON SURO-BREDIE: There's no other
17 questions?

18 MS. CHATTIN: No.

19 CHAIRPERSON SURO-BREDIE: Mr. Willey?

20 MR. WILLEY: I might say, you know,
21 basically most American farmers and ranchers believe
22 in free trade, and we're not afraid to compete on a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 world market, and I think given a level playing field,
2 American agriculture and the cattle industry, in
3 particular, do very well with more trade.

4 Thank you very much.

5 CHAIRPERSON SURO-BREDIE: Our next witness
6 is Gary Broyles, President of the National Association
7 of Wheat Growers.

8 MR. BROYLES: Thank you.

9 Good afternoon, Madame Chairman and
10 members of the committee. Joining me this afternoon
11 is Barbara Spangler, who is the Executive Director of
12 the Wheat Export Trade Education Committee.

13 My name is Gary Broyles, and I am a wheat
14 producer from Rapelje, Montana and currently serve as
15 the President of the National Association of Wheat
16 Growers, and today I do represent the National
17 Association of Wheat Growers, the Wheat Export Trade
18 Education Committee, and U.S. Wheat Associates.

19 On average, nearly 50 percent of our total
20 wheat production is exported. Our success or failure
21 hinges on the ability of U.S. wheat to be exported
22 around the globe.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The wheat industry strongly supports
2 aggressive action to liberalize trade in both the WTO
3 and the free trade areas of the Americas negotiations.
4 The FTAA negotiations have the potential to extend
5 beyond the level of liberalization achieved in the
6 WTO, and the U.S. must take full advantage of this
7 opportunity.

8 Additionally, a key element in the FTAA
9 process is the potential to foster hemispheric
10 alliances in such a way that they can carry over to
11 the WTO negotiations where differences on a number of
12 issues are extremely contentious, and we believe that
13 a strong commitment in the hemisphere will be very
14 positive for us against the protectionist positions
15 promoted primarily by the EU.

16 The U.S. must refrain from negotiating on
17 domestic supports within the context of the FTAA. It
18 would be unwise for us to unilaterally disarm within
19 the hemisphere while leaving the EU and other
20 competition to continue subsidizing their producers at
21 high levels.

22 We concur with the U.S. position to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 encourage the countries within the hemisphere to work
2 together in the WTO to substantially reduce and more
3 tightly discipline trade distorting domestic support.
4 Negotiations on areas such as market access, state
5 trading enterprises, export subsidies, and sanitary
6 and phytosanitary issues must result in freer and
7 fairer trade.

8 The reduction of high tariffs must be a
9 priority of the FTAA discussions to insure greater
10 market access for U.S. products. Action must be taken
11 to address problems in the administration of tariff
12 rate quotas and to eliminate price ban systems.

13 The FTAA must achieve and give us access
14 on par with Argentina and Canada to insure access to
15 the hemisphere and to the growing economies of about
16 800 million people. Brazil alone imports 7.9 million
17 metric ton of wheat. Despite a U.S. logistical
18 advantage to northern Brazil, Argentina dominates this
19 lucrative market.

20 This pattern is repeated throughout the
21 South American region. The U.S. wheat industry has
22 also faced difficulties in export markets to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Guatemala, Peru, Colombia, and Venezuela primarily as
2 a result of the Canadian Wheat Board.

3 The Canadian Wheat Board consistently and
4 intentionally under prices U.S. wheat in these
5 markets. The U.S. wheat industry is encouraged by the
6 U.S. position to eliminate export state trading
7 enterprises within this hemisphere.

8 The Canada-U.S. free trade agreement of
9 1998 resulted in maintaining the trade inequities
10 between the U.S. and Canadian farmers. We must not
11 allow these to be carried forward into the FTAA as we
12 level the playing field within the hemisphere.

13 Last year, the North Dakota Wheat
14 Commission filed a Section 301 petition with the
15 Office of the USTR, and the affirmative finding of
16 that investigation by the USTR indicated that the
17 Canadian Wheat Board's monopolistic characteristics
18 clearly disadvantaged U.S. wheat producers.

19 At the time of the affirmative finding,
20 Ambassador Zoellick announced, and I quote, the United
21 States will pursue multiple avenues to seek relief for
22 U.S. wheat farmers from the trading practices of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Canadian Wheat Board, a government monopoly trading
2 enterprise, end quote.

3 We in the wheat industry strongly urge the
4 administration to move quickly to self-initiate
5 dumping investigation against the Canadian Wheat Board
6 and to file a complaint against the board under
7 Article 19 of the WTO.

8 The U.S. wheat industry agrees with the
9 U.S. position to eliminate all trade distorting export
10 subsidies within the hemisphere and supports the
11 establishment of a mechanism that would prohibit
12 agricultural products from being exported to the
13 hemisphere with the aid of export subsidies.

14 The inconsistent application of sanitary
15 and phytosanitary regulations has resulted in some
16 slowing of trade to the Central and Latin America
17 regions. A hemispheric agreement must be established
18 that sets a risk assessment framework as well as the
19 creation of an accepted and expedited procedure for
20 addressing sanitary and phytosanitary disputes.

21 And we also believe that trade in new
22 technologies is adequately addressed in the World

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Trade Organization negotiations and probably should
2 not be revisited in these.

3 The FTAA negotiations represent, I
4 believe, and we believe, a great opportunity for the
5 advancement of free and fair trade within our
6 hemisphere for the U.S. wheat producers, and we
7 encourage you to insure that although we are very
8 concerned about environmental labor issues, that they
9 not be allowed to hinder this opportunity.

10 In closing I would offer that the wheat
11 industry is very pleased by the U.S. trade position on
12 agriculture, and however, the work towards consensus
13 will not be easy on several important issues, and most
14 notably one of those for us is the Canadian Wheat
15 Board, and it must be addressed.

16 I thank you for the opportunity to appear
17 before you this afternoon, and I want to assure you
18 that the wheat industry stands ready to work with you
19 and kind of shoulder to shoulder toward a successful
20 outcome of these negotiations.

21 I thank you for this time and would do my
22 best to answer any questions that you might have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON SURO-BREDIE: Thank you, Mr.
2 Broyles.

3 MR. KARAWA: Thank you, Mr. Broyles.

4 I have one question. Barbara had raised
5 this with another testimony. In your written
6 testimony you had mentioned export competition. You
7 support the establishment of a mechanism that will
8 prohibit agricultural products from being exported to
9 the FTAA by non-FTAA countries with the aid of export
10 subsidies.

11 Could you help us understand or give us
12 some ideas of what you think that kind of mechanism
13 will be like or you contemplate?

14 MR. BROYLES: Well, I would defer to my
15 partner here. However, I'm going to offer this from
16 a producer's standpoint because I think it's
17 important.

18 The wheat industry, much like the cattle
19 industry, feels that we can compete very well in the
20 world market if we have some sort of a level playing
21 field. If we unilaterally try to disarm ourselves
22 from export subsidies, but we allow other countries,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 primarily the European Union to continue to use that,
2 then all we have done is essentially neutered
3 ourselves in the world market, and we don't want that
4 to happen.

5 As we move to that, and we think that will
6 probably be handled very well by the U.S. position in
7 the WTO talks. We are very supportive of that. That
8 is why we think that maybe we should leave that alone
9 and let that become part of the WTO and set up kind of
10 a restrictive, if you will, that we can eliminate our
11 export subsidies amongst ourselves and at the same
12 time not allow export subsidies to be brought into
13 this country.

14 That way that puts us together as a
15 hemisphere, I think puts us in some position in the
16 WTO to achieve our overall position as a country and
17 as an industry.

18 Do you follow me?

19 MR. KARAWA: Yes.

20 MR. BROYLES: Okay.

21 MS. SPANGLER: I don't think we have a
22 structure for doing that. There has been discussed at

1 length in the Business Forum of the FTAA in the
2 agricultural section for the last several years
3 finding a workable solution to that proposal is not
4 going to be easy, but probably it would send a
5 stronger message if we could come up with something
6 that wouldn't be trade distorting for the whole world
7 to address what Europe is doing. That's the main
8 objective in that.

9 MS. CHATTIN: You also mentioned risk
10 assessment and NSPS measures in your testimony. I had
11 a couple of questions.

12 One is either now or later on if there are
13 particular problems in terms of particular SPS
14 measures in markets in the FTAA, we would be very
15 interested in knowing the specifics of the problems
16 that you face in other markets.

17 But you also mentioned something about
18 establishing in -- maybe I misunderstood -- in the
19 FTAA a unique risk assessment framework outside what
20 is in the WTO or did I misunderstand what your intent
21 was in that testimony?

22 Because many of the U.S. delegation -- I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 think we want to make sure the SPS is enforced, and
2 there is from some countries some pressure to lower
3 standards, which is unacceptable to us.

4 But if you could just maybe explain to me
5 a little bit more what you meant by risk assessment
6 procedures or if it's in your testimony, I haven't had
7 time to read all of it in detail.

8 MR. BROYLES: Actually, this position
9 within the FTA would be in support of what's being
10 done in the WTO negotiations, and really what we're
11 wanting is some ability to benchmark, if there is a
12 risk or if it's being used as some sort of kind of an
13 unsubstantiated trade sanctions to limit us when there
14 really is no evidence of a problem or an issue.

15 And two other things. The one I'm the
16 most familiar with is TCK Smut in which we have been
17 closed out of some markets with absolutely no
18 scientific foundation for it, but it was out there.
19 There was some discussion about it. So we can just
20 say, "Well, we're going to cut off U.S. access to this
21 because of that."

22 I think that there is a strong move within

1 the WTO to address that. We want it to be consistent
2 with that so that, you know, we're concerned about
3 disease and health, but let's make sure that it is
4 truly founded and not just used against us kind of as
5 a phantom export restriction.

6 MS. SPANGLER: I think an additional part
7 of that would be an efficient method to quickly
8 establish whether there's a true risk or not, not to
9 let it drag on for great lengths of time while they
10 banter us around, as the Europeans are so good at.

11 If we can establish something in the
12 hemisphere that is sufficient and addresses these
13 issues in a very timely manner, then we have a better
14 chance of moving it forward in the big round, which is
15 the ultimate.

16 And it may not happen in this round, but
17 at least the discussions could begin and we could
18 build the relationships in the hemisphere to support
19 what we need to do.

20 We do not want to change the SPS or open
21 that or go anywhere. We firmly believe that the
22 system is in place that will work for all new

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 technologies, as positive as the current problems that
2 we have.

3 CHAIRPERSON SURO-BREDIE: Thank you.

4 Thank you, Mr. Broyles.

5 MR. BROYLES: Thank you very much.

6 CHAIRPERSON SURO-BREDIE: Our last witness
7 is Rachel Cohen, U.S. Advocacy Liaison, Doctors
8 Without Borders.

9 Ms. Cohen.

10 MS. COHEN: Is this working?

11 CHAIRPERSON SURO-BREDIE: Yes.

12 MS. COHEN: Okay. Last but not least, I
13 hope you're awake enough to hear what I have to say
14 today. Thank you so much for having me.

15 I'm pleased to provide this brief
16 testimony which focuses entirely on the potential
17 negative consequences of the free trade area of the
18 Americas, on access to essential medicines in
19 developing countries and the Americas, on behalf of
20 Doctors Without Borders, Medecins Sans Frontieres, or
21 MSF, an international medical humanitarian
22 organization with field operations in nearly 90

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 countries.

2 Too often in the countries where MSF works
3 we have been forced to watch our patients die simply
4 because the drugs that they need that could improve,
5 extend, or save their lives are not available and not
6 affordable. For us this is simply unacceptable. It
7 is a violation of our fundamental medical ethics.

8 In the Americas, this has been
9 particularly true for our teams providing AIDS care
10 and treatment in places like Guatemala, Honduras,
11 Nicaragua, El Salvador, and Peru who have witnessed
12 countless unnecessary deaths due to the lack of access
13 to antiretroviral therapy and other essential AIDS
14 medications.

15 There are currently 1.8 million people
16 living with HIV/AIDS in Latin America and the
17 Caribbean and 110 AIDS deaths were recorded in the
18 region in 2001. The Caribbean is the second most
19 affected region in the world after Sub-Saharan Africa.

20 Hundreds of thousands of people with
21 HIV/AIDS in developing countries in the Americas do
22 not have access to antiretroviral therapy simply

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 because they cannot afford it. Just two years ago,
2 the average cost of a triple combination of
3 antiretrovirals, which is what is required for
4 effective treatment, was between ten and 15,000 U.S.
5 dollars per patient per year, and today it is
6 available for under \$300 per patient per year.

7 These price reductions were the direct
8 results of international public pressure from
9 activists and other non-governmental organizations
10 like MSF and due to generic competition, particularly
11 from Indian and Brazilian manufacturers.

12 Generic competition was possible only
13 because of the lack of patent protection in those
14 countries on pharmaceuticals. In the coming years,
15 such competition will not be possible due to the
16 filing of patents on pharmaceuticals in key developing
17 countries with manufacturing capacity unless flexible
18 conditions for granting compulsory licenses are
19 available and compulsory licenses are routinely issued
20 to address public health concerns.

21 Compulsory licensing of pharmaceuticals is
22 widely acknowledged to be one of the most important

1 policy tools for insuring generic competition which
2 will be key to improving access to HIV/AIDS medicines
3 in Latin America and the Caribbean.

4 One hundred and forty-two countries
5 adopted the Doha declaration on the TRIPS agreement in
6 public health in November of 2001. Public health
7 needs were firmly placed above commercial interests,
8 and much needed clarifications about the key
9 flexibilities in the TRIPS agreement were offered.

10 The very fact that public health and, in
11 particular, access to medicines has been singled out
12 as an issue needing special attention in TRIPS
13 implementation acknowledges that health care and
14 health care technologies must be treated differently
15 from other commodities and give countries leeway for
16 taking measures to counter the negative effects of
17 excessive intellectual property protection on health.

18 The FTAA threatens to undermine the
19 achievements in Doha in many key ways. In particular,
20 USTR's negotiating position in FTAA gives rise to
21 serious questions for us about the U.S. government's
22 true motives in agreeing to the Doha declaration.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 The Doha declaration must remain a ceiling
2 for FTAA negotiations on intellectual property rights
3 as they relate to public health technologies, and the
4 U.S. government must not renege on the commitments it
5 made in Doha.

6 It is clear in information about the U.S. '
7 FTAA negotiating objectives that the U.S. is pushing
8 to impose standards on pharmaceuticals that far exceed
9 requirements set forth in the TRIPS agreement and that
10 in some cases these standards directly contradict both
11 the spirit and the letter of the Doha declaration,
12 which clearly recognized concerns about the effects of
13 patents on prices and stated unambiguously that TRIPS
14 should be interpreted and implemented in a manner
15 supportive of WTO members' right to protect public
16 health and, in particular, to promote access to
17 medicines for all.

18 I would like to cite just four examples of
19 this. The first are dramatic limitations on the
20 circumstances under which compulsory licenses on
21 pharmaceuticals may be issued.

22 Although the Doha declaration has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 reaffirmed the right of WTO members to issue a
2 compulsory license for whatever reason, not only in
3 cases of national emergency, the U.S. proposal
4 explicitly provides the compulsory licenses shall be
5 granted only in four limited circumstances, that is,
6 public noncommercial use, situations of a declared
7 national emergency, other situations of extreme
8 urgency, or declared anti-competitive practices, and
9 solely for purposes of government use.

10 Should such a provision be adopted, it
11 would cancel the possibility of granting compulsory
12 licenses to remedy patent abuses, such as excessive
13 pricing and to foster competition in the private
14 sector to increase access to patented essential
15 medicines.

16 The second major concern that we have is
17 with regard to extensions of patent terms of
18 pharmaceuticals beyond the 20 year minimum that's set
19 forth in the TRIPS agreement.

20 The U.S. proposes to extend the term of a
21 patent in exchange for a, quote, early registration of
22 generics, also known as Bolar exemptions, and to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 compensate for unreasonable administrative or
2 regulatory delays that occurred while granting the
3 patent.

4 This is not required by the TRIPS
5 agreement, and a WTO panel expressly stated that such
6 patent extensions do not constitute a, quote,
7 legitimate interest of patent owners.

8 Thirdly, we're concerned about abuse of
9 powers to regulatory authorities to enforce patents.
10 The U.S. proposes that drug regulatory authorities
11 notify the patent owner of the identity of any company
12 that is seeking approval to market a generic version
13 of the patented invention while the patent is in
14 effect.

15 This effectively means that drug
16 regulatory authorities will function as sort of de
17 facto patent enforcement agencies and is likely to
18 result in unjustified patent extensions. Such a
19 proposal can only serve to protect invalid patent
20 claims as valid claims receive adequate protection
21 through normal judicial processes.

22 And finally, we are concerned about

1 exclusive rights over pharmaceutical data. Although
2 the TRIPS agreement only requires WTO members to
3 protect undisclosed tests or data against unfair
4 commercial use and disclosure in the framework of
5 unfair competition law, the U.S. is proposing to grant
6 exclusive rights on pharmaceutical data for at least
7 five years. Such a proposal will result in delaying
8 and limiting generic competition in cases where a
9 patent does not exist or a compulsory license has been
10 granted.

11 The U.S. negotiating objectives for FTAA
12 aim to strengthen patent rights beyond what is
13 required in trips and reduce the extent of the
14 safeguards to the detriment of public health. They
15 are clearly TRIPS plus and have been acknowledged as
16 such by a member of a number of experts.

17 If the U.S. achieves its negotiating
18 objectives, FTAA will negate the achievements of the
19 Doha declaration and could have devastating
20 consequences in terms of access to medicines for
21 millions of people in low and middle income countries
22 in the Americas who are living with HIV/AIDS, malaria,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 tuberculosis, Chagash (phonetic) disease,
2 leishmaniasis, and a number of other neglected
3 diseases.

4 For them this is a matter of life and
5 death, and we, therefore, urge the U.S. government in
6 the strongest possible terms to abandon TRIPS plus
7 negotiating objectives and instead negotiate FTAA in
8 keeping with the spirit and letter of the Doha
9 declaration.

10 Thank you for your attention.

11 CHAIRPERSON SURO-BREDIE: Thank you very
12 much, Ms. Cohen.

13 All of us have great respect for your
14 institution and for its winning the Nobel Peace Prize.

15 Our questioner will be Kira Alvarez from
16 the USTR office.

17 MS. ALVAREZ: Thank you for your statement
18 and for your testimony. It's very helpful as we sit
19 here and look at our negotiating positions.

20 I only have one question this morning or
21 this afternoon actually -- this evening. It concerns
22 with respect to sort of linkage and the patent term

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 extension and the data protection.

2 Could you sort of explain to us how you
3 see this or your proposals or your views on that and
4 whether these are consistent with U.S. law and where
5 U.S. law on these positions is?

6 MS. COHEN: Is this working?

7 I'm not sure that it has any impact or any
8 implications in terms of U.S. law. What we're talking
9 about are strictly the ways in which these proposals
10 are going to affect developing countries, that is to
11 say low and middle income countries.

12 So I'm not a legal expert, but I don't
13 believe this will in any way affect U.S. law. Of
14 course, every nation will have their own sovereign
15 national legislation which, should FTAA be negotiated
16 successfully and signed to, would need to be developed
17 and implemented nationally.

18 So that would not, I don't think, have any
19 implications whatsoever for U.S. law.

20 MS. ALVAREZ: Okay.

21 CHAIRPERSON SURO-BREDIE: Could you tell
22 us is the Brazilian generic industry exporting to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 other countries or is it still a domestic industry?

2 MS. COHEN: At the moment the Brazilian
3 industry, which is a state sponsored pharmaceutical
4 organization -- the main one is Pharamninos -- is
5 producing almost exclusively for the domestic market.
6 So at the moment they're not exporting.

7 One of the things I've just been in a
8 meeting with, an interagency task force that's working
9 on sort of the implementation of the Doha declaration,
10 and in particular working out a solution to what's
11 known as Paragraph 6 in the Doha declaration, which is
12 the production for export question.

13 What didn't get resolved in Doha
14 unfortunately was what are countries to do if they
15 have limited or insufficient manufacturing capacity
16 themselves. They cannot issue a compulsory license to
17 export. You can only at this stage issue a compulsory
18 license to import or produce locally.

19 So an exporting country would have to
20 essentially issue a compulsory license to export. The
21 Brazilian government has said many times they're not
22 necessarily every interested in exporting. We are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 encouraging them to, indeed, begin exploring ways to
2 increase their own manufacturing capacity so that they
3 can export.

4 It's a very important resource for the
5 rest of the region, and for other countries in the
6 rest of the world, certainly in the developing world.
7 In one limited exception, MSF has been importing
8 generic antiretrovirals from Brazil in a special
9 agreement that we have with Pharmaninos in South
10 Africa for use in our project there, where we're
11 treating about 400 people living with HIV with
12 antiretrovirals.

13 Initially we were treating 180 people, and
14 by importing the Brazilian generics under a special
15 agreement with the Brazilians and with the full
16 knowledge and authorization of the Medicines Control
17 Council in South Africa, which is their equivalent of
18 the FDA, we've been able to double the enrollment
19 capacity of our program on basically the same budget
20 because the drugs are half as expensive, even as those
21 patented medicines that have been reduced, where the
22 prices have been reduced by GlaxoSmithKline and a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 number of other pharmaceutical companies. At the
2 moment they're not exporting.

3 CHAIRPERSON SURO-BREDIE: Thanks you, Ms.
4 Cohen.

5 MS. COHEN: Thank you very much.

6 CHAIRPERSON SURO-BREDIE: This hearing is
7 adjourned until tomorrow morning at ten o'clock.

8 Thank you.

9 (Whereupon, at 5:08 p.m., the hearing in
10 the above-entitled matter was adjourned, to reconvene
11 at 10:00 a.m., September 10, 2002.)
12
13
14
15
16
17
18
19
20
21
22